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Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street N.E.  
Washington, D.C. 20549-1090

Re: Request for Information on the Duties of Brokers, Dealers, and Investment Advisers (Release No. 34-69013; IA - 3558; File No. 4-606)

By Electronic Delivery

Dear Ms. Murphy:

The American Council of Life Insurers (“ACLI”) is a national trade association. ACLI represents over 300 life insurers that hold over 90 percent of the industry’s total assets and premiums. Our members serve 75 million American families that rely on life insurers’ products for financial and retirement security. We appreciate the opportunity to share our views on the SEC’s Request for Information (“RFI”) on the duties of broker-dealers and investment advisers<sup>1</sup>.

ACLI has actively participated in the evolving dialog about the regulation of broker-dealers and investment advisers, including the SEC’s Study Report in response to Section 913 of the Dodd–Frank Wall Street Reform and Consumer Protection Act<sup>2</sup> (“Dodd Frank Act”), the Rand Report to the SEC, and other regulatory initiatives. Our letter responds to the questions posed in the RFI, explains insurance product distribution, and highlights some of the extensive regulations governing life insurers and their distributors.

**I. Continuation of the SEC’s On-Going Study of Broker-Dealers and Investment Advisers**

The RFI represents the next step in the SEC’s continuing study about the obligations of broker-dealers and investment advisers in response to Section 913 of the Dodd-Frank Act.<sup>3</sup> It is constructive to review existing regulatory systems, identify areas in need of improvement, and calculate the economic impact of modifications under consideration. Careful evaluation of the many different business models operating in this space will contribute to efficient, effective regulation.

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<sup>1</sup> [78 Fed. Reg. 45](#) (Mar. 7, 2013) at 14848. (“RFI Release”)

<sup>2</sup> Public Law 111–203, 124 Stat. 1376 (2010).

<sup>3</sup> The RFI follows years of administrative rulemaking on this issue and litigation about it. See, Wilkerson; *The Status of Broker-Dealers Engaged in Investment Advisory Functions: Muddy Waters Slowly Clearing*, ALI-ABA Conference on Life Insurance Company Products: Current Securities and Tax Issues (2007).

Objective review of data and information will enhance customer protection without reducing access to securities products or services.

## **II. Interests of the Life Insurance Industry**

Life insurers and their agents play a significant role in almost all of the products, services and functions that the SEC will examine under the RFI phase of its continuing study. Life insurers and their affiliated distributors provide products and services that fulfill consumers' retirement, estate, tax, and financial planning needs. A majority of FINRA's universe of registered representatives work for broker-dealers affiliated with life insurance companies.

A principal element of life insurance product distribution involves identifying customer needs and matching them with appropriate financial products. Similarly, many life insurance agents provide financial planning services in the sale of these products as investment adviser representatives. In short, life insurers' products, functions, services and regulation fit within the scope and purpose of the SEC's RFI project.

With this information, the SEC will achieve a broad focus that will constructively serve the SEC, investors and financial service institutions in the continuing evaluation under Section 913 of the Dodd-Frank Act.

## **III. Life Insurers' Position on Fiduciary Duty and Harmonized Standard of Care**

To frame the context of our input below, we summarize again our position on the SEC's evolving response to Section 913 of the Dodd-Frank Act:

- If the SEC determines it is appropriate to harmonize broker-dealer and investment adviser regulation involving personalized recommendations about securities to retail customers, it is essential that any related rulemaking preserve or enhance:
  - Investor protection for retail customers; and
  - Choice and access to securities products and services for the full spectrum of retail customers;
- Any new harmonized standard of care must satisfy the Dodd-Frank Act mandate that it apply only to "personalized" investment advice about securities to "retail investors" as those terms are defined.
- Any harmonization initiatives should:
  - Allow the retail customer and the broker-dealer or investment adviser to chart the scope and cost of services to be provided, including services involving personalized investment advice about securities;
  - Permit the types and timing of disclosures provided to retail customers to be based upon, among other things, the securities products and/or services being offered and provided;
  - Provide disclosure to retail customers that is useful, concise and targeted, with those retail customers seeking more detailed information being able to access such

- information via a broker-dealer or investment adviser website (or by hard copy if so requested)<sup>4</sup>;
- Modernize and reduce overlapping, duplicative and inconsistent regulation about advertising, recordkeeping and selected other rules;
  - Avoid promulgating rules or guidance that would unnecessarily favor one type of securities product over another or lessen retail customer access to certain securities products or proprietary products when other securities products are available;<sup>5</sup> and,
  - Provide clear guidance as to how broker-dealers and investment advisers, when providing personalized investment advice about securities to retail customers, meet a new standard of care.<sup>6</sup>
- For decades life insurers have used non-cash compensation, such as educational conferences and other tangible non-monetary rewards, to motivate their agents without compromising the suitability of sales. The prohibition of non-cash compensation would be unsubstantiated, damage the ability of life insurers to conduct business and should not be part of any recommended regulatory changes.

#### **IV. Data and Other Information Relating to the Current Market for Personalized Investment Advice and Associated Regulatory Regimes**

The RFI elicits information about the characteristics of current regulatory regimes for investment advisers and broker-dealers as a baseline for comparison,<sup>7</sup> and information about the types and availability of services. Because broker-dealers and investment advisers affiliated with life insurers are different from “wire-house” broker-dealers and large or “typical” investment advisers, we are pleased to provide background about this important segment of the marketplace.

##### **A. The Interrelationship of Life Insurers’ Products with Broker-Dealer and Investment Adviser Regulation**

In order to meet the varied needs of consumers and the demands of a highly competitive marketplace, life insurers offer a wide range of financial products and services. Increasingly, these products and services implicate the federal securities laws, including broker-dealer regulation by the SEC and FINRA under the Securities Exchange Act of 1934 (the “1934 Act”) and regulation by the SEC under the Investment Advisers Act of 1940 (the “Advisers Act”) and state securities regulators

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<sup>4</sup> ACLI supports the provision of simple, clear and concise disclosures by broker-dealers when providing personalized investment advice about securities to retail clients. See Letter from Carl Wilkerson to Elizabeth Murphy, Secretary, SEC (Aug. 30, 2010), available at <http://www.sec.gov/comments/4-606/4606-2669.pdf>.

<sup>5</sup> For example, if any promulgated rules lead broker-dealers and investment advisers to believe that they can gain a competitive advantage through decreasing compliance costs by offering a smaller subset of securities products and services than they otherwise would, it could result in unintended negative consequences of limiting retail customer choice and access to certain securities products and services.

<sup>6</sup> Specifically, such guidance should be tailored to reflect and preserve the existing and varying business models through which securities products and services are currently provided to retail customers.

<sup>7</sup> See RFI Release at 14852 at Section II. While the release at note 24 specifically references the SEC’s Study Report discussion about general differences and similarities in the regulatory structures for broker-dealers and investment advisers, it does not cover much of the additional relevant regulation governing broker-dealers and investment advisers affiliated with life insurers.

under the Uniform Securities Act of 2002 and other state laws. Life insurers must also fulfill a comprehensive set of state insurance laws and regulations in every U.S. jurisdiction.

As a result, life insurers and their affiliates frequently find themselves subject to the overlapping requirements of the 1934 Act, the Advisers Act, and the insurance and securities regulations of the fifty states. The RFI will provide another step in the SEC's careful examination of investor protection and the effectiveness of regulatory oversight.

With the decline of defined benefit pensions and the uncertainty of federal safety net programs like Social Security and Medicare, financial services consumers in the United States bear increasing personal responsibility for their own financial well-being. Life insurers and their affiliates, like other financial services providers, have responded to consumers' needs with a wide range of products and services.<sup>8</sup>

In order to meet the requirements of federal and state securities laws, many of these services are delivered through affiliated broker-dealers and investment advisers subject to federal and state securities laws.<sup>9</sup> For example, individual variable life insurance contracts and variable annuities are "securities" under the federal securities laws. Accordingly, these contracts are distributed by registered broker-dealers often referred to as "insurance affiliated" or "independent" broker-dealers.

Life insurers have expanded their products and services to meet a wider range of customer needs that also trigger additional regulatory structures, such as FINRA governance over variable product distribution. Historically, FINRA has relied on a "rules based" approach to regulation. FINRA regulations add considerable complexity to life insurers' enterprise-wide compliance operations that must also fulfill comprehensive regulation by all state insurance departments. FINRA Rule 2330, a rare single-product suitability rule for the distribution of individual variable annuities, is significantly more granular and demanding than FINRA Rule 2111 governing all other securities sales. We mention this simply to demonstrate that life insurance products and distributors face more layers of consumer-protective regulation than any other product in today's financial services marketplace. These more comprehensive requirements of Rule 2330 are discussed in detail in Appendix A.

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<sup>8</sup> These products and services often include:

- Term life insurance;
- Fixed and variable cash value life insurance;
- Disability income insurance;
- Long-term care insurance;
- Many variations of fixed and variable annuity contracts;
- Investment brokerage services, including: stocks, bonds, mutual funds, ETF's, and 529 savings plans;
- Investment advisory services, including: financial planning, fee based Wrap accounts, and separately managed accounts;
- Individual and business retirement planning;
- Estate planning and trust services;
- Non-qualified employee benefit consulting; and,
- 401(k) and other qualified plan design, funding and administration

<sup>9</sup> At least one life insurer in ACLI's membership is registered as a broker-dealer instead of conducting broker-dealer operations through an affiliated entity.

The Advisers Act also has an increasing impact on insurers and their affiliates. Some life insurers have offered investment advisory services for many years and others may not offer any.<sup>10</sup> On an industry-wide basis, however, life insurers and their salespersons are increasingly engaged in investment advisory functions and are subject to investment adviser regulation. There are many factors driving this trend. One significant factor is simply the industry's effort to meet consumers' increasing need and demand for investment advice. Recent regulatory developments have only hastened that trend.<sup>11</sup>

Through the evolution of insurers' business into broker-dealer and investment advisory markets, insurance agents may wear several distinct, but separate, "hats" in offering these services to the public. For example, a representative may at the same time be an appointed insurance agent (of multiple insurance companies), a registered representative of a broker-dealer, an investment adviser representative, and possibly a solicitor who may make referrals to others, such as other investment advisers, banks, or trust companies. Different regulatory schemes apply to the representatives' activities, depending upon the products or services offered and the particular compensation arrangements. In the case of variable insurance products, multiple regulations apply to the same transaction because these products are considered to be both insurance and securities products.

In other cases, such as financial planning combined with implementation of various product solutions, different regulations might apply to the various aspects of the same customer relationship. For example, a client might have an advisory relationship for purposes of receiving a financial plan that is subject to the Advisers Act. That same client might also elect to purchase an insurance policy or execute securities transactions, which are each subject to differing regulatory requirements. Similarly, a single client might have an advisory account in addition to a brokerage account. While a single representative can be qualified to service both accounts, and might in fact service both accounts, different rules and standards apply to each. The multiple regulatory schemes that apply to the actions of a single representative pose demanding challenges in terms of training and supervising the salespersons.

Insurers provide significant written disclosures at the point of sale to satisfy multiple regulators' requirements and to help customers understand the nature of their various products and relationships. These disclosures include many product related materials (insurance sales illustrations, policy contracts, required "buyers guides," mutual fund prospectuses), marketing materials describing the firm's offerings, documents that provide the terms for a brokerage or advisory relationship (brokerage account agreements, advisory account agreements, Form ADV, investment policy statements), and other required disclosures (privacy policy statements, for example). There also is a considerable amount of post-sale disclosure depending on the nature of products and services provided (in-force insurance ledgers, transaction confirms, period

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<sup>10</sup> Many life insurers provide general investment education that does not constitute personalized investment advice or involve serving as an investment adviser. See, e.g., Department of Labor Interpretive Bulletin 96-1.

<sup>11</sup> For example, in keeping with the recommendations of the "Tully Report," some insurance affiliated broker-dealers offered "fee based" or "fee in lieu" investment accounts without registering as Investment Advisers. On March 30, 2007, the United States Court of Appeals for the D.C. Circuit issued a ruling vacating Rule 202(a)(11)-1 under the Advisers Act, which had permitted these fee-based accounts as an exception to the definition of investment advisers. Although Rule 202(a)(11)-1 has now been vacated, its original issuance in April 2005 stimulated insurance affiliated broker-dealers to offer services under the Advisers Act. Although this rule has been vacated, it did have the effect of bringing more activity by insurers under the umbrella of the Advisers Act.

performance reporting for investment accounts, updated privacy statements and ADV brochures, as required in some cases).

### **(B) The Relationship between Investment Advice and Insurance Products**

Broker-dealers, including insurance affiliated broker-dealers, offer valuable guidance and expertise to clients in the context of individual product sales. Given the importance and individual nature of their own financial needs coupled with the ever-increasing array and complexity of financial services and products available, individual consumers benefit from analysis and advice about product and service choices. This principle is at the heart of existing broker-dealer regulation, which imposes suitability obligations on firms who make product recommendations to their clients.

The suitability obligations in FINRA Rule 2111 require that firms make an effort to obtain personal and financial information from their customers and that they have “reasonable grounds for believing that the recommendation is suitable for such customer.”<sup>12</sup> FINRA Rule 2330 imposes significant additional elements governing suitability in the sale of variable annuities. Likewise, the NAIC Suitability in Annuity Transactions Regulation, discussed in Appendix A, achieves suitability and supervision standards patterned after FINRA requirements and exists in virtually all states.

Given the range of insurance products available and the tax benefits that apply to those products, it is constructive to note that the analysis and advice accompanying insurance product sales might differ in kind from the incidental investment advice offered by other broker-dealers. For example, beneficiaries of life insurance proceeds do not pay income tax on the death benefit. Moreover, because life insurance proceeds provide liquidity at an insured’s death, it can be an effective vehicle for funding estate plans. Life insurance also might be used to help fund non-qualified employee benefits for employers of all sizes. Life insurance, long term care insurance, and annuities – which can provide a lifetime stream of income – also are likely to play important parts in meeting the retirement needs of the baby boom generation and others to come.

Depending on the nature of products and services offered, these products and ancillary services currently might or might not fall under the federal securities laws. As the scope and requirements of those laws are reevaluated following the RFI, it is important to consider how any changes will impact the ability of consumers to access the wide range of products, services, and advice that they need to meet their financial security needs.

### **(C) The Scope of Business Conducted by Broker-Dealers Affiliated with Life Insurers**

Broker-dealers affiliated with life insurance companies are significantly different from full service or “wire-house” broker-dealers in their operations, products and services. One type of broker-dealer affiliated with life insurers engages in retail securities activities primarily, or only, in the context of a larger insurance business. Many registered representatives associated with these broker-dealers operate principally as life insurance and annuity salespersons. Securities sales can frequently constitute an incidental amount of business (or none at all) relative to insurance product sales by an office or registered representative. Some of these broker-dealers sell only the products of their affiliated life insurance company.

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<sup>12</sup> Rule 2111 contains three primary obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability. See [FINRA Rule 2111](http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=14960&element_id=9859&highlight=suitability#r14960) at [http://finra.complinet.com/en/display/display.html?rbid=2403&record\\_id=14960&element\\_id=9859&highlight=suitability#r14960](http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=14960&element_id=9859&highlight=suitability#r14960).



In some cases, the insurance-affiliated retail broker-dealer may sell a broader array of securities products, including mutual funds, 529 plans, 401(k), 403(b) plans and individual securities. Certain of these broker-dealers and a segment of their registered representatives are dually registered as investment advisers and investment advisory representatives (“IAR” or “IARs”), respectively, and also offer various investment advisory services such as financial planning for a fee and managed accounts. As a by-product of this type broker-dealer affiliated with life insurers, supervision and compliance is often conducted within the overall insurance distribution system.

Another type of life insurer-affiliated broker-dealer is strictly a “wholesaler” - distributing the insurance company’s variable products through affiliated and unaffiliated selling broker-dealers. This type of broker-dealer generally does not engage in retail activities and does not maintain possession or control of customer funds or securities. Those insurance company employees who perform wholesaling duties or certain related activity are generally registered with the insurer’s wholesaling broker-dealer. Care should be taken in any rulemaking to distinguish these types of wholesaling broker-dealer activity from widespread retail sales broker-dealer activity.

In some instances, an insurance-affiliated broker-dealer may conduct both wholesaling and retail activity. In any case, it is helpful to consider those securities activities and services generally *not* offered by most broker-dealers affiliated with life insurers. Typically, these broker-dealers do not, for example, maintain discretionary accounts permitting registered representatives to purchase and sell securities on behalf of a retail customer without specific approval of each transaction. These broker-dealers generally do not take custody of retail customer funds, securities or assets. This type of broker-dealer does not typically “carry” customer accounts – instead they often have contractual relationships with “clearing” broker-dealers who, among other things, execute securities transactions and take custody of applicable retail customer funds, securities or assets. Additionally, insurance-affiliated broker-dealers do not engage in market making, principal trading, IPOs, or securities lending.

Insurance broker-dealers require that payment for variable life insurance or variable annuities be made payable by check or by electronic means to the processing office of the underwriting insurer, and not by check payable to the agent/registered representative or even to the broker-dealer. Additional purchases, transfers, withdrawal and redemption requests for these products are typically submitted by consumers directly to the underwriting insurer, not to the agent/registered representative or the broker-dealer. Variable contracts and shares in investment companies are issued directly to purchasers and do not constitute bearer instruments. Consequently, the opportunity for misappropriation of these instruments by such registered representatives is greatly mitigated and in certain instances virtually nonexistent.

We respectfully offer this background to highlight the diversity within the broker-dealer universe. SEC initiatives that evaluate harmonized standards of care should appropriately accommodate different business models, organizational structures, product lines, and compliance and oversight operations. The SEC should carefully parse the unique structure, activities, and regulation of these limited-purpose broker-dealers and investment advisers affiliated with life insurers from the much broader functions and regulatory issues associated with wire-house broker-dealers and investment advisers with a broader range of services.

#### **(D) The Extensive Regulatory Framework Governing Insurance Product Distribution**

Life insurance companies and their associated persons currently comply with a vast array of regulation administered by state insurance departments, the SEC, the Department of Labor, Financial Industry Regulatory Authority (“FINRA”) and various state securities divisions and departments. For your reference and convenience, we have attached Appendix A to highlight the extensive network of laws and regulations governing their activities that directly relate to the issues within the scope of the RFI.<sup>13</sup> With this detailed information at hand, we believe the RFI process can be fully balanced and informed in its findings and recommendations responsive to Section 913 of the Dodd-Frank Act. Inclusion of this information in the SEC’s evaluation will help generate informed, cost-based conclusions.

As we have noted above and in the appendix, insurance distribution and sales are already subject to a detailed and rigorous framework with respect to required rules of conduct. These business conduct rules currently govern all aspects of the customer relationship including gathering information about the customer, disclosure, sales practices, advertising, communications with the public, supervision, maintenance of customer account assets, safeguarding confidential customer information, training, compensation, and supervision of associated persons.

In so doing, the SEC should avoid regulations that would inadvertently cause in a reduction in retail customer choice and access to personalized investment advice about securities to retail customers across the broad economic spectrum. Retail customers with seven figures to invest will always be able to find personalized investment advice about securities regardless of the evolving standards of care. In contrast, a retail customer with under \$100,000 to invest and retail customers in a less

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<sup>13</sup> We note here certain key highlights, including:

- NAIC Suitability in Annuity Transactions Model Regulation;
- FINRA Rule 2330 (previously, designated as NASD Rule 2821) Suitability and Supervision in the Sale of Variable Annuities;
- FINRA’s Rule Non-Cash Compensation for Variable Products;
- NAIC Annuity Disclosure Model regulation;
- NAIC Model Replacements Regulation, and state insurance regulations such as New York Regulation 60 which governs replacements;
- ACLI Disclosure Initiative for Fixed, Index, and Variable Annuities;
- ACLI Summary Annuity Disclosure Templates and Instructions;
- The State Regulatory Framework Regarding Variable Product Sales;
- The NAIC Unfair Trade Practices Act and the prohibition on “unfair financial planning practices;”
- State insurance consulting laws governing the simultaneous receipt of product commissions and fees for insurance consulting services;
- NAIC regulations on agent background investigations;
- NAIC regulations on initial and continuing agent education; and,
- NAIC regulations on agent licensing.



populated or rural area may not be able to do so unless the proper balance is struck in any regulatory modifications.

Accordingly, any recommendations for change should:

- Enable broker-dealers to continue offering their full array of securities products and services to help meet retail customers' financial needs and objectives;
- Preserve retail customer access to the securities products and securities services offered by broker-dealers, investment advisers and their associated persons;
- Preserve various means of structuring securities-related compensation and fees so that retail customers acquire and pay for services as they choose; and
- Avoid providing unintended competitive advantages to any particular business models or securities product and services lineups.

Similarly, any recommendations for change should not require broker-dealers, investment advisers and their associated persons to:

- Recommend or otherwise provide investment advice about securities that simply are the "cheapest" or "less expensive" product or service;<sup>14</sup>
- Limit securities products or services choices; and,
- Expand its available securities product or services offerings.

## **V. Baseline Assumptions for Alternative Uniform Standards of Conduct**

The RFI release describes a series of non-exclusive assumptions about potential alternative approaches to a uniform fiduciary standard of conduct for broker-dealers and investment advisers.<sup>15</sup> Through this process, the SEC hopes to elicit feedback on the benefits and burdens of the various alternatives. We present responses to the hypothetical baseline assumptions that are germane to the life insurance industry.

### **(A) Initial Clarification and Assumptions**

**SEC Assumption 1:** *Assume that the term "personalized investment advice about securities" would include a "recommendation," as interpreted under existing broker-dealer regulation and would include any other actions or communications that would be considered investment advice about securities under the Advisers Act (such as comparisons of securities or asset allocation strategies). It would not include "impersonal investment advice" as that term is used for purposes of the Advisers Act. The term "personalized investment advice" would also not include general*

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<sup>14</sup> While we recognize that a particular securities product or services cost and any related expenses are relevant factors for consideration when providing investment advice about securities to retail customers, we strongly believe that providing such investment advice solely in consideration of the lowest costs and any related expenses would often result in retail customer harm and not in fact benefit or provide enhanced investor protections.

<sup>15</sup> See RFI Release at 14854.

*investor educational tools, provided those tools do not constitute a recommendation under current law.*

### **ACLI Response to SEC Assumption 1**

Life insurers strongly support the substance of Assumption 1. As noted in ACLI's comment letter on the SEC Study, we believe that "personalized investment advice" about securities is investment advice about securities that is provided to a retail customer based on the personal financial information provided by such retail customer, including the retail investor's financial needs, investment objectives, risk tolerance and financial circumstances.<sup>16</sup> It is, therefore, investment advice about securities that is intended to be specific to the retail customer and is intended to meet his or her specific financial circumstances, objectives and needs as well as the securities products or services which he or she is seeking.

### **Advice as Distinguished from General Communications**

Any alternative regulation should avoid the unintended negative consequence of "chilling" contact and interactions between and among BDs, IAs, their respected associated persons and retail customers. There are numerous interactions between such BDs, IAs, their respective associated persons and retail customers that do not constitute personalized investment advice about securities. Accordingly, any rulemaking should make clear that such types of non-personalized investment advice about securities with retail customers will not be deemed "personalized investment advice about securities." These include, but are not limited to:

- **General Education/Impersonal Advice.** BDs, IAs and their associated persons provide general education and impersonal advice about securities and investments to retail customers and to broader audiences. Such information may include general concepts such as modern portfolio theory, asset diversification and asset allocation. This education and impersonal advice is not, however, intended to address the financial circumstances and/or needs of any particular individual(s) within the larger group – in fact, it is typically delivered absent such specific retail customer information.
- **Account and Retail Customer Relationship Maintenance.** Depending on the business model and the nature of the relationship with the retail customer, as a matter of good business and compliance practices, an associated person of a broker-dealer or investment adviser may have - and should not be discouraged from having - regular and frequent contact with applicable retail customers that often does not include the provision of personalized investment advice about securities.
  - For example, annual or quarterly contact with a retail customer to remind him or her to rebalance assets held in a variable annuity to match allocations set up at the time of contract purchase should not constitute "personalized investment advice about securities" absent, for example, efforts initiated by the associated person to recommend that the retail customer change the allocations

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<sup>16</sup> In this connection, we note that the term "impersonal investment advice is defined under Advisers Act Rule 203A-3(a)(3)(ii) as "investment advisory services provided by means of written or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts."

percentages to accommodate changes in the retail customer's individual financial facts and circumstances.

- **Needs Analysis.** Associated persons of broker-dealers and investment advisers should be able to meet with retail customers as necessary to determine their current, and any new, investment objectives and financial needs without concern that doing so would impose an affirmative duty to render personalized investment advice about securities<sup>17</sup> (on an on-going or of an episodic nature) or that a harmonized standard of care would apply to such interactions, unless the retail customer wishes to seek and the associated person is qualified to provide, and does provide, such investment advice about securities.

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**SEC Assumption 2:** *Assume that the term “retail customer” would have the same meaning as in Section 913 of the Dodd- Frank Act, which is “a natural person, or the legal representative of such natural person, who (1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and (2) uses such advice primarily for personal, family, or household purposes.”*

#### **ACLI Response to SEC Assumption 2**

The Dodd-Frank Act defines “retail customer” as a natural person (or the legal representative of such natural person) who receives personalized investment advice from a BD or IA and who uses such advice primarily for personal, family, or household purposes.

Consistent with this definition, we request that the definition of “retail customer” in any subsequent rulemaking make clear that there is no requirement to “look through” defined contribution pension plans to individual participants and their accounts. Such plans are already subject to Department of Labor guidance addressing investor education and regulations governing advice, which impose fiduciary duties consistent with ERISA. The overlaying of a different and potentially conflicting fiduciary duty by the SEC would not serve to protect retail customers and could discourage the formation and continuation of pension plans, as well as the continued availability of beneficial educational services to plan participants. Accordingly, if any harmonized standard of care rules are ultimately promulgated, it is important to clarify that any such rules are not intended to confer ERISA or other fiduciary status on a broker-dealer, investment adviser or their associated persons.

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**SEC Assumption 3:** *Assume that any action would apply to all SEC-registered broker-dealers and SEC-registered investment advisers. To the extent commenters are of the view that the duty should be limited to a particular subset of SEC-registered broker-dealers or SEC-registered investment advisers or expanded to include all broker-dealers or investment advisers, commenters should explain how and why it should be limited or expanded, and include any relevant data and other information to support such an application.*

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<sup>17</sup> Please see Section 913(g)(1)(k)(1) of the Dodd-Frank Act.

### **ACLI Response to SEC Assumption 3**

ACLI supports SEC Assumption 3. As noted in response to Assumption 2, any regulatory action should not apply to any broker-dealers or investment advisers that do not have retail customers, or to any broker-dealer or investment adviser with respect to a customer who is not a retail customer.

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**SEC Assumption 4:** *Assume that the uniform fiduciary standard of conduct would be designed to accommodate different business models and fee structures of firms, and would permit broker-dealers to continue to receive commissions; firms would not be required to charge an asset-based fee. As provided in Section 913, “[t]he receipt of compensation based on commissions, fees or other standard compensation for the sale of securities, for example, would not, in and of itself, be considered a violation” of the uniform fiduciary standard of conduct. Broker-dealers also would continue to be permitted to engaged in, and receive compensation from, principal trades. To satisfy the uniform fiduciary standard of conduct, however, assume that at a minimum a broker-dealer or investment adviser would need to disclose material conflicts of interest, if any, presented by its compensation structure.*

### **ACLI Response to SEC Assumption 4**

Life insurers support Assumption 4, based on the statement that compensation models would not be affected by any uniform fiduciary standard of conduct. Regarding the reference to “standard compensation,” any SEC action should not burden or preclude the operation of compensation arrangements and business models, including non-cash compensation arrangements, such as producer meetings that are educational or that reward production. Third party compensation models (revenue sharing or asset-based compensation) are another example of arrangements that should not be constrained. Disclosure about compensation arrangements and structures is appropriate and superior to limiting different business models.

Any SEC action should not prioritize one form of compensation over other forms of compensation. For example, graduated compensation should not be preferred over others, such as non-cash compensation. It is important to differentiate that FINRA Rule 2320 defines non-cash compensation more broadly than simply “sales contests,” as referenced in the RFI Release. Excessively broad bans on non-cash compensation could contradict FINRA Rule 2320 and unnecessarily disrupt the programs it allows.

The SEC should not regulate the method of compensation as a general matter, because it puts the SEC in the inappropriate position of picking and choosing among different compensation models in the marketplace. Instead, any SEC action should be neutral toward compensations systems, and emphasize disclosure about potential conflicts of interest.

As explained further in the appendix and below, FINRA Rules 2320 and 2830 carefully evaluated non-cash compensation arrangements through an extended and comprehensive rulemaking process. Any SEC action should allow programs fulfilling FINRA Rules 2320 and 2830. FINRA’s enhanced new suitability rules together with Rules 2320 and 2830 provide important consumer protections, and safeguard against conflicts of interest.

Life insurers support reasonable principles-based disclosure. In the SEC's broad examination in the RFI initiative, it is important to acknowledge that disclosure required under other regulatory structures can provide relevant, useful information that can coextensively fulfill disclosure standards under any new SEC standard of care requirements, without duplicating disclosure delivered to customers. This focused approach on the totality and layers of meaningful state and federal regulation avoids diluting the value of disclosure.

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**SEC Assumption 5:** *Assume that the uniform fiduciary standard of conduct would not generally require a broker-dealer or investment adviser to either (i) have a continuing duty of care or loyalty to a retail customer after providing him or her personalized investment advice about securities, or (ii) provide services to a retail customer beyond those agreed to between the retail customer and the broker-dealer or investment adviser. Assume that the assumption of whether a broker-dealer or investment adviser might have a continuing duty, as well as the nature and scope of such duty, would depend on the contractual or other arrangement or understanding between the retail customer and the broker-dealer or investment adviser, including the totality of the circumstances of the relationship and course of dealing between the customer and the firm, including but not limited to contractual provisions, disclosure and marketing documents, and reasonable customer expectations arising from the firm's course of conduct. Similarly, the uniform fiduciary standard of conduct would apply within the context of the scope of services agreed to between the customer and the broker-dealer or investment adviser, and would not generally require the broker-dealer or investment adviser to provide services beyond those agreed to through a contractual or other arrangement or understanding with the retail customer.*

#### **ACLI Response to SEC Assumption 5**

Life insurers support the substance of Assumption 5 that any uniform fiduciary standard of conduct would not impose a continuing duty of care or loyalty. Assumption 5 provides constructive guidance on the impact and scope of contractual arrangements on these duties, including services in the absence of a formal contract. Our response to SEC Assumption 1 above also provides an important analytical framework relevant to SEC Assumption 5.

Annual assessments or client reviews should not trigger new or renewed obligations. In some cases, a contract may not be in place. A reference to disclosure should suffice in cases where a contract does not exist.

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**SEC Assumption 6:** *As discussed below, assume that the offering or recommending of only proprietary or a limited range of products would not, in and of itself, be considered a violation of the uniform fiduciary standard of conduct.*

#### **ACLI Response to SEC Assumption 6**

The phrase "in and of itself" within Assumption 6 should not create an unnecessary and negative implication that offering only proprietary or a limited range of products may be nonetheless susceptible to violations of uniform fiduciary standards of conduct. Broker-dealers and investment advisers affiliated with life insurers are different from some full-service broker-dealers or investment advisers, and appropriately offer a more limited range of financial products such as proprietary insurance products and mutual funds. Insurance distributors in these types of structures offer

important services to often underserved and lower net worth markets to help achieve essential financial and retirement security. Significantly, the SEC stated in the RFI and in its Study that it does not intend to reduce the availability of products or services.<sup>18</sup> To be consistent with this goal, any action that evolves from the RFI should carefully avoid conveying unwarranted implications about specific products, business models, or compensation models.

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**SEC Assumption 7:** *Assume that Section 206(3) and Section 206(4) of the Advisers Act and the rules thereunder would continue to apply to investment advisers, and would not apply to broker-dealers. Assume that to satisfy its obligations under the uniform fiduciary standard of conduct, however, a broker-dealer would need to disclose any material conflicts of interest associated with its principal trading practices.*

**ACLI Response to SEC Assumption 7**

We support the substance of Assumption 7. Although the safeguards of Sections 206(3) and (4) are appropriate for investment advisers, they are not germane for broker-dealers or meaningful for their customers. Even though Adviser Act standards don't apply to broker-dealers, FINRA rules provide significant parallel safeguards.

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**SEC Assumption 8:** *Assume that existing applicable law and guidance governing broker-dealers, including SRO rules and guidance, would continue to apply to broker-dealers.*

**ACLI Response to SEC Assumption 8**

It would be sensible and appropriate for existing applicable law and guidance governing broker-dealers, including SRO rules and guidance, to continue to apply to broker-dealers. As noted above and in greater detail in the appendix, life insurance companies and their associated distributors currently comply with a vast array of regulation administered by state insurance departments, the SEC, the Department of Labor, FINRA and various state securities divisions and departments. These comprehensive patterns of regulation provide important consumer protections and ensure appropriate market conduct.

**VI. Uniform Fiduciary Standard of Conduct-the Duty of Loyalty<sup>19</sup>**

**SEC Assumption 1:** *Assume that each broker-dealer and investment adviser that provides personalized investment advice about securities to a retail customer would be required to provide the following to that retail customer:*

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<sup>18</sup> See RFI discussion in the text preceding footnote mark 12, which also cross-references the SEC recommendations in its Study.

<sup>19</sup> See RFI Release at 14856.



- (a) *Disclosure of all material conflicts of interest the broker-dealer or investment adviser has with that retail customer. This disclosure largely could be made through a general relationship guide.*
- (b) *Disclosure in the form of a general relationship guide similar to Form ADV Part 2A should be delivered at the time of entry into a retail customer relationship. The guide would include the firm's services, fees, and scope of services. It also could include disclosure of other material conflicts of interest, such as conflicts of interest presented by compensation structures.*
- (c) *Oral or written disclosure at the time personalized investment advice is provided of any new material conflicts of interest or any material change of an existing conflict.*

### **ACLI Response to SEC Assumption 1**

When providing personalized investment advice about securities to retail customers, broker-dealers and investment advisers should make balanced and fair disclosure of material facts relevant to the retail customer's investment decision, including material conflicts of interest. The following factors should govern the types of disclosures broker-dealers and investment advisers may be required to provide retail customers in connection with the provision of personalized investment advice about securities:

- Simple, Clear and Concise Disclosure. Retail customers should receive clear disclosure of the range of securities products and services that are offered to them by the BD and their associated persons. Such disclosures should include a narrative description of the types of fees and costs associated with the securities offerings and the manner in which the BD and its associated person are compensated.
- Plain English. Disclosure should be written in plain-English, and regulators should work with the industry and others to identify ways to simplify, and make disclosures more helpful to retail customers.
- Layered Disclosure. It would be constructive and useful for retail customers to obtain shorter summary disclosures at or before the sale of securities products and services with companion guidance that additional information is available through a firm's website or through hard copy upon request. Summary disclosures make it more likely that retail clients will read and understand information disclosed.
- Use of Firm Websites. Broker-dealers and investment advisers should be able to provide concise and helpful written disclosures to retail customers and reference links to their websites for certain types of additional, detailed information. Such disclosures should also refer retail customers seeking more detailed disclosure to the firm's website. This position comports with recent SEC positions, such as in the release adopting amendments to the Form ADV Part 2.<sup>20</sup> The SEC stated in the adopting release that it "will continue to consider different approaches to delivering financial information to investors."
- Disclosure of Material Conflicts of Interest. Perceived or actual conflicts of interest between the entity and their retail customers can arise regardless of the business model. Broker-dealers and investment advisers should take appropriate steps to identify material conflicts and disclose these conflicts to their retail customers.
- Disclosure of Compensation. Retail customers should receive a brief narrative description about associated person compensation in the sale of securities products and services, so the retail customer can evaluate the personalized investment advice about securities

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<sup>20</sup> Amendments to Form ADV, Investment Advisers Act Release No. IA-3060 (July 28, 2010), <http://www.sec.gov/rules/final/2010/ia-3060.pdf> .

received in light of any conflict of interest to evaluate the value of securities products and services and related benefits. Retail customers will find most useful concise information regarding how associated persons are compensated and by whom for various products and services, rather than the exact amounts of compensation, in order to determine whether compensation incentives may lead to a conflict of interest.

Where consent may be required or necessary regarding disclosed material conflicts of interest, consent can be evidenced in a variety of ways, including customers' behavior, such as acting on recommendations or purchasing the recommended product. This comports with existing standards under the Investment Advisers Act which don't require consent about specific conflicts of interest, as a general matter, except in the principal trading context. If potential conflicts of interest are disclosed at the inception of the contract, no further disclosure about specific conflicts need to be specifically emphasized.

A blanket requirement to provide a "general relationship guide," such as Form ADV Part 2A, may not work for every broker-dealer based on differences in business models or product lines. For example, some broker-dealers affiliated with life insurers may only have a relationship with the customer in the purchase of an insurance product, and the value of a general relationship guide is less compelling in this instance.

If the SEC reaches the determination that a relationship guide is mandated, it should be tailored to the nature of the firm's business model rather than a uniform guide, such as an ADV, that could have numerous "not applicable" (N/A) categories that would not be constructive or informative. Additionally, it should be noted that unlike other financial product distribution, insurance products uniquely enjoy "free look" provisions that give consumers additional time to evaluate the product, fees, and any potential conflicts of interest.

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**SEC Assumption 2:** *Assume that any rule under consideration would treat conflicts of interest arising from principal trades the same as other conflicts of interest. Assume that such a rule would make clear that it would not incorporate the transaction-by-transaction disclosure and consent requirements.*

#### **ACLI Response to SEC Assumption 2**

Although broker-dealers affiliated with life insurers do not trigger principal trading issues, as a general matter we support the statement that any proposed rule would not incorporate the transaction-by-transaction disclosure and consent requirements.

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**SEC Assumption 3:** *Assume that the rule would prohibit certain sales contests.*

#### **ACLI Response to SEC Assumption 3**

Any new regulatory action should not prohibit carefully regulated non-cash compensation practices, including those based on production. We provide background and discussion below about the role and regulatory status of non-cash compensation arrangements in the life insurance industry. Life insurers support regulatory enhancements that facilitate a broker-dealer or investment adviser's

ability to execute compliance and supervision responsibilities in securities-related activities of their associated persons. Non-cash compensation is strictly regulated under FINRA rules that protect the sales process and has existed in the life insurance industry for many decades. Elimination of non-cash compensation would inflict a disruptive economic impact. The prohibition of non-cash compensation in Assumption 3 is unsubstantiated and should not be part of any recommended regulatory changes.

### **(A) Non-Cash Compensation in the Life Insurance Industry**

Traditionally, life insurance companies have offered tangible non-cash incentives to reward and encourage sales efforts in the distribution of insurance products. Life insurance companies award their salespersons "production credits" for insurance sales which are applied to non-cash incentive programs. In conducting sales incentive programs within the company, some insurers also award production credits for the sale of securities to their agents who are registered representatives of its affiliated insurance broker-dealer. Typically, the company awards production credits to encourage and recognize the sale of variable products or mutual funds to its sponsors.<sup>21</sup>

In limited circumstances, some insurers also grant credit for the sale of other companies' products, which may include variable contracts or mutual funds. In these situations, however, the outside product sponsor does not provide or finance in non-cash incentives. As with its own products, the life insurer establishes any incentive arrangements. Non-cash sales incentive programs in the life insurance industry serve worthwhile training and educational goals that help salespersons better serve consumers.

ACLI member companies use a variety of non-cash compensation arrangements to reward and incentivize their salespersons. These arrangements include, among other things, sales conferences and related events; trophies, ribbons, plaques and other awards; and advanced training, technology and marketing assistance.

These non-cash arrangements provide certain important business benefits that cash compensation cannot provide. For example, substantial research supports the fact that non-cash compensation can provide more satisfaction to the recipient than the equivalent amount of cash. The research suggests that recipients associate more positive feelings with non-cash compensation, feel more comfortable talking to others about non-cash compensation, and, as a result, are better incentivized by non-cash compensation.

Similarly, non-cash compensation that takes the form of sales or educational conferences provides further benefits like allowing salespeople to gather together and share their experiences and learn from each other and learn more about the products and services that they can offer. More satisfied and better educated salespeople lead to a better customer experience.

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<sup>21</sup> Under some general agency arrangements, individual insurance agents contract directly with the general agent and not the life insurance company itself. In turn, some general agencies may offer non-cash production incentives which are independent from the life insurance Company. Significantly, however, production incentives offered by General agents are not financed by product sponsors like insurance company non-cash sales incentives, therefore, these programs do not reflect the influence of outside product sponsors for the reasons discussed in the text, therefore, general agency incentive programs do not trigger the unstated concerns reflected in the our FY's hypothetical prohibition against non-cash compensation.

In addition, some life insurers in ACLI's membership have spent a significant amount of time and resources to encouraging their salespersons to offer customers both investments and life insurance products (fixed and variable). So that salespersons recommend products based on customer needs, incentives for salespersons to sell either investments or life insurance products should be similar wherever possible.

It will be important to avoid unnecessarily disrupting the operations of insurance affiliated broker-dealers and investment advisers, or their fundamental link with insurance company organizational structures and distribution systems. Life insurance non-cash incentive programs, including production credits for securities, do not conflict with regulatory goals protecting consumers.

Although life insurers provide non-cash sales incentives, insurance broker-dealers have full knowledge and control over incentives provided with regard to security sales. With awareness about the insurer's programs, these broker-dealers can capably supervise and analyze the sales efforts or recommendations of their registered representatives.

Moreover, unlike some incentive programs, non-cash compensation offered by life insurers to their affiliated agents is not financed by outside product sponsors who contact registered representatives directly without the principals' knowledge. Because life insurers' programs generally provide production credits for the entire line of products that agents and representatives have authority to sell, life insurance incentive programs do not diminish the broker-dealers' supervisory obligation because they retain full knowledge and control over the amount and form of representatives' compensation.

Life insurers also comply with existing state insurance regulations that permit but regulate non-cash compensation practices. Most notably, New York Insurance Code Section 4228 permits certain non-cash compensation practices with regard to life insurance policies and annuities. The rule places monetary limits on the value of prizes and awards that insurers can provide agents.<sup>22</sup> The 22-page rule has extraterritoriality, meaning that Section 4228 governs all life insurance and annuity sales in the United States for companies that sell life insurance or annuities in the State of New York.<sup>23</sup> An inconsistency between state and federal requirements is neither a desirable nor a necessary outcome, given the well-established practices in the life insurance industry and the regulatory safeguards that have long been in place.

## **(B) The Regulatory Status of Non-Cash Compensation in the Life Insurance Industry**

FINRA developed detailed regulations on cash and non-cash compensation standards governing variable insurance products through eight proposals spanning a *ten year* period, which culminated

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<sup>22</sup> New York Insurance Code Section 4228(e)(6) provides: "A company, including any person, firm or corporation on its behalf or under any agreement with it, may pay or award, or permit to be paid or awarded, prizes and awards to agents and brokers pursuant to a plan of agent or broker compensation, provided that no single prize or award may exceed a value of two hundred fifty dollars, and that the total value of such prizes and awards paid or awarded to any agent or broker within a calendar year may not exceed one thousand dollars. Notwithstanding the foregoing, a company may also pay or award not more frequently than monthly a prize or award valued at not more than twenty-five dollars. The costs of all such prizes and awards shall not be included in applying the limits established in subsection (d) of this section. The superintendent may authorize higher limits on the value of prizes and awards than those set forth herein."

<sup>23</sup> The New York Department of Financial Services website contains additional information about what steps life insurers must take to comply with Section 4228. <http://www.dfs.ny.gov/insurance/life/agcomp/life4228.htm>

in Rule 2320 in 1998.<sup>24</sup> The long hiatus between initial proposal and final adoption reflects the complexity of this issue and the deliberative rule governing it. This rule's administrative history established a rich source of interpretive guidance upon which broker-dealers relied since 1998. The SEC explicitly approved FINRA's amended rule on non-cash compensation based on the conditions of the rule and the explanation in FINRA's application for approval. The SEC also approved a largely parallel NASD Rule 2830 governing non-cash compensation in the sale of mutual funds.

Significantly, as noted in the RFI, the SEC's [Study](#) on broker-dealers and investment advisers cataloged existing regulations governing non-cash compensation in the sale of securities.<sup>25</sup> The Study explained that "FINRA rules establish restrictions on the use of non-cash compensation in connection with the sale and distribution of mutual funds, variable annuities, direct participation program securities, public offerings of debt and equity securities, and real estate investment trust programs. These rules generally limit the manner in which members can pay for or accept non-cash compensation and detail the types of non-cash compensation that are permissible."<sup>26</sup>

While it acknowledges FINRA regulation of these arrangements, the RFI provides no quantification or analysis supporting the tentative prohibition on non-cash compensation in Assumption 3. Nothing in the legislative history of Section 913 of the Dodd-Frank Act, the SEC Study, or the Rand Report identified non-cash compensation as an area in need of revision. As such, Assumption 3 is largely a solution in search of a problem. Assumption 3 should be eliminated.

### **(C) Strict Limitations on Non-Cash Compensation Successfully Protect the Sales Process**

FINRA Rules 2320 and 2830 strictly limits non-cash compensation in the sale of variable insurance products and investment companies to: (1) gifts of up to \$100 per associated person annually; (2) an occasional meal, ticket to a sporting event or theater, or comparable entertainment; (3) payment or reimbursement for training and education meetings held by broker-dealers or issuers/sponsors for the purpose of educating associated persons of broker-dealers, so long as certain conditions are met; (4) in-house sales incentive programs of broker-dealers for their own associated persons; and (5) contributions by any company or other FINRA member to a broker-dealer's permissible in-house sales incentive program, subject to explicit conditions<sup>27</sup>.

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<sup>24</sup> See NASD NTM 88-17 (March 1988); NASD NTM 89-51 (July 1989); NASD NTM 91-25 (May 1991); NASD NTM 91-68 (May 1991); NASD NTM 94-67 (Oct. 1994); NASD NTM 95-56 (Sept 1995); NASD NTM 96-52 (August 1996); NASD NTM 97-50 (Aug. 1997); NASD NTM 98-75 (Sept. 1998). See also Wilkerson, *Recent Regulatory Developments Affecting Insurance Affiliated Broker-Dealers*, ALI-ABA conference on Life Insurance Company Products (Nov 1991) at 229; Krawczyk, *Recent Developments of Interest to Sellers of Variable Insurance Products*, ALI-ABA Conference on Life Insurance Company Products (Nov 1998) at 257.

<sup>25</sup> See <http://www.sec.gov/news/studies/2011/913studyfinal.pdf> at 68.

<sup>26</sup> *Id.* The Study references the following FINRA non-cash compensation regulations: FINRA Rules 2310, 2320, and 5110, and NASD Rule 2830. *Id.* at note 311.

<sup>27</sup> Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, are conditioned on: (i) the member's or non-member's non-cash compensation arrangement, if it includes variable contract securities, is based on the total production of associated persons with respect to all variable contract securities distributed by the member; (ii) the non-cash compensation arrangement requires that the credit received for each variable contract security is equally weighted; (iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (iv) the record keeping requirement in the rule is satisfied.



Rule 2320 requires broker-dealers to maintain records of all non-cash compensation received by the broker-dealer or its associated persons in permitted non-cash compensation arrangements. The records must include: the names of the offerors, companies or other broker-dealers making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the broker-dealer and its associated persons with the rule.

ACLI regularly compiles and digests all FINRA disciplinary actions to capture data involving the distribution of variable products and broker-dealers affiliated with life insurance companies. In a survey of the past five years, there have been no reported disciplinary actions involving non-cash compensation associated with variable products of broker-dealers affiliated with life insurers. It appears that Rule 2320 has operated to protect the integrity of the sales process and consumers. Again as noted above, nothing in the legislative history of Section 913 of the Dodd-Frank Act, the SEC's Study or the Rand Report suggests the elimination of non-cash compensation.

#### **(D) The Disruptive Economic Impact of Eliminating Non-Cash Compensation**

One of our member companies has estimated that it has invested \$300 million in technology and training to integrate insurance and investments so that its agents can meet clients' needs in both categories. Elimination of non-cash compensation arrangements would compromise this company's investment in agent training and consumer service.<sup>28</sup> An analogous impact can be expected at other life insurers relative to their scale and scope of non-cash compensation arrangements.

In addition to these direct economic costs, banning non-cash compensation could cause a reduction in the range and availability of products and services to consumers, something the RFI seeks to avoid. Many insurance affiliated broker-dealers operate out of small offices serving local communities. Non-cash compensation under strict FINRA guidelines enables agents in these communities to travel to centralized training seminars and acquire enhanced skills and knowledge that empowers them to better serve consumers in their local communities. Some companies also utilize non-cash compensation to manage business expenses in the small offices often common in the life industry.

Unlike many wire-house broker-dealers operating in larger offices clustered around metropolitan centers, insurance affiliated investment professionals also serve the smaller markets throughout the

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With regard to training and education meetings, the rule imposes strict additional conditions that require associated persons obtain their broker-dealer's prior approval to attend the meeting and that attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by the rule; (ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings; (iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and (iv) the payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement allowed under the rule. These limitations successfully assure that training and education meetings are appropriate.

<sup>28</sup> Like many of its peer companies, the company's training conferences use integrated goals, where both insurance and investment production are rewarded and recognized. Each year, more than 1200 (20%) of the company's agents receive the training at conferences where reaching a sales target is a prerequisite for attendance. This company estimates that each year agents who meet the eligibility to attend these educational conferences produce \$10 million in insurance products premiums.



country. The RFI indicates that the hypothetical rule's assumptions should not disadvantage or disrupt different business models. Contrary to this worthwhile aspiration, however, Assumption 3 would disrupt life insurers' business models compared to wire-house broker-dealers and large investment advisory operations.

Elimination of the currently permitted non-cash compensation practices would also cause structural and operational consequences. Following adoption of FINRA Rule 2320, broker-dealers distributing variable products implemented enterprise-wide compliance procedures and supervisory practices to fulfill the rule's mandates regarding non-cash compensation arrangements associated with life insurers' variable products. Likewise, compliance procedures were modified to accommodate parallel changes to NASD Rule 2830 governing non-cash compensation in mutual fund sales.

Adjustment to revised non-cash compensation standards was a significant undertaking, and involved considerable expense and commitment to training, revised compliance procedures, supervision, and system changes. Elimination of currently authorized practices under FINRA rules also triggers similar considerations.

The implementation of Assumption 3 would revoke practices that evolved over the ten-year development of Rule 2320. The RFI does not identify any regulatory goals supporting the elimination of non-cash compensation. Nothing in the RFI Release evaluates the structural impact on broker-dealers' existing enterprise-wide compliance procedures, training, systems or supervision. These collective factors are unacceptable in regulatory initiatives, even under the hypothetical approach of the RFI.

Life insurance sales programs have existed for many decades and have not experienced significant changes in scope or approach. In these programs, the insurance broker-dealer has control over the suitability of the particular program, is responsible for the sales methods utilized to sell the offering, and is in a position to exercise control over its sales force. Consequently, these programs are devoid of an outside influence that would undermine the broker-dealers ability to supervise its salespersons. These important features were specifically recognized by FINRA its rules promulgated its rules for non-cash compensation in variable products.

Life insurers support regulatory enhancements that facilitate a broker-dealer or investment adviser's ability to execute compliance and supervision responsibilities in securities-related activities of their associated persons. The prohibition of non-cash compensation in Assumption 3 is unsubstantiated and should not be part of any recommended regulatory changes.

## **VII. Uniform Fiduciary Standard of Conduct-The Duty of Care<sup>29</sup>**

The RFI Release observes that the duty of care is another critical component of the uniform fiduciary standard, and notes that the SEC would specify certain minimum professional obligations of broker-dealers and investment advisers under the duty of care. The RFI identifies several elements of a duty of care and elicits feedback, which we address:

- Suitability. As explained further above and outlined in the appendix, broker-dealers affiliated with life insurers fulfill the strongest FINRA single-product suitability standard in Rule 2330,

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<sup>29</sup> See Section III (B) in RFI Release at 14857.

which has proven to be very effective. Additionally, distributors of annuities and variable life insurance must fulfill parallel and exacting requirements under the NAIC Suitability in Annuities Transaction Regulation and in Variable Life Insurance Model Regulation, which are also explained in the appendix. In light of these very detailed and focused regulatory standards, there is no need for additional suitability standards governing recommendations about securities to retail customers.

- Product-specific requirements. The existing product specific requirements enumerated in the RFI Release (penny stocks, options, debt securities and bond funds, municipal securities, mutual fund share classes, interests in hedge funds, and structured products) are appropriate. We would, however, oppose the creation of new product specific requirements.
- Duty of best execution. This duty is not generally germane to the activities of broker-dealers or investment advisers affiliated with life insurers because the insurance products and mutual funds they principally distribute are priced at daily net asset value.
- Fair and reasonable compensation. We do not have any objections to fair and reasonable compensation standards paralleling existing mutual fund and variable product sales load rules, but if some other standards evolve, we respectfully reserve the opportunity to evaluate and comment on them. Companies should be able to rely on existing regulations concerning fair and reasonable compensation. It is important to note, however, that fair and reasonable compensation does not necessarily equate to the cheapest product.

### **VIII. Alternative Approaches to the Uniform Fiduciary Standard of Conduct<sup>30</sup>**

Life insurers strongly support protections serving the best interests of customers, which can be meaningfully safeguarded with disclosure about services and material conflicts of interest. This approach provides an effective means to protect consumers and facilitate informed purchase decisions.

ACLI strongly opposes the importation of regulatory models from foreign jurisdictions that set limits on how investment advisers charge for their services, including the prohibition on the receipt of ongoing charges, and the receipt of commissions from those providing investment advice. Existing broker-dealer and investment adviser disclosure requirements clearly set forth the amounts and calculations for compensation practices. Clear disclosure is a superior approach to proscriptive practices that may have been developed in other jurisdictions that do not possess the layered disclosure that exists under U.S. regulatory networks. Additionally, insurance consulting laws, as discussed further in the appendix, govern the ability of distributors of life insurance products to obtain both commissions and fees for advice on insurance purchases. In sum, therefore, it would neither be advisable nor provide enhanced consumer protection to follow the quite different regulatory approaches in some foreign jurisdictions.

### **IX. Request for Information About Potential Areas for Further Regulatory Harmonization**

It is challenging at this stage of the SEC's continuing study of broker-dealers and investment advisers to offer constructive suggestions for further harmonization. Perhaps after examining the structure of any proposed rule that evolves following the RFI, we would be better able to offer some areas for harmonization. Some simpler areas of possible harmonization could include continuing education standards, eliminating duplicative requirements and improving the overall knowledge of financial professionals providing recommendations about the purchase of securities in the retail

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<sup>30</sup> See Section III (C) in RFI Release at 14858.

market. Some other opportunities may also exist in coordinated disclosure about similar services and products. Any approaches to harmonization should avoid unintended disruptions to business models that have developed over 50 years. Likewise, the principle based regulation of investment advisers may not mesh smoothly with the detailed proscriptions broker-dealers face in their traditional regulatory structures. We will continue to evaluate potential areas for harmonization, with a specific eye on suggestions following any proposed rulemaking in response to Section 913 or the RFI.

## **X. Other Considerations**

### **(A) Interpretation and Compilation of Data Submissions on the RFI**

The RFI elicits quantitative data and economic analysis in response to a complex set of questions about the benefits and costs that could evolve from alternative standards of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers. The RFI release indicates that the input will inform the SEC's consideration of standards of conduct for broker-dealers and investment advisers, and will also inform the SEC's consideration of possible harmonization of other regulatory aspects governing broker-dealers and investment advisers.

ACLI strongly supports the careful and informed balancing of regulatory initiatives against associated costs and burdens to regulated entities, such as broker-dealers and investment advisers. In executing this important task, it is essential to fully consider the impact of any rulemaking on the wide variety of business models that currently exist in this regulatory space. Moreover, in accurately calculating the balance between effective regulatory goals and consequent economic burdens, the many layers of other state and federal regulation confronting different participants in this market must be objectively factored into the calculus.<sup>31</sup>

### **(B) Multiple Moving Parts**

An impressive number of state and federal initiatives are currently underway that address broker-dealers or investment advisers, including supervision, suitability, and disclosure. State regulators are also actively developing initiatives to address similar matters. With so many coextensive initiatives, it is important that the SEC consider the collective impact of these initiatives and the unique aspects of life insurers and their distributors under these regulatory and disclosure requirements.

Multiple simultaneous regulatory initiatives are currently pending that would govern fees, services, conflicts and concomitant disclosure.<sup>32</sup> It is important as a matter of timing and substance to

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<sup>31</sup> Life insurers and their salespersons fulfill comprehensive networks of regulation administered by state insurance departments, the Securities and Exchange Commission, and self-regulatory organizations, such as the FINRA. Quite simply, the insurance sales process is one of the most heavily regulated financial services in the marketplace today. Our submission and its accompanying attachments outline the products, services and regulation of life insurers and their distributors.

<sup>32</sup> A brief summary of selected proposals highlights the complexity and interconnectedness of some of the initiatives, and their impact on repeated system rebuilds, disclosure, and distribution or service arrangements.

**SEC Initiative on Mutual Fund Distribution, Marketing and Service Fees.** On July 21, 2010, the SEC invited comment on a proposal that would rescind Rule 12b-1 under the Investment Company Act of 1940, and replace it with a new framework for "marketing and service fees" and "ongoing sales charges." See Release Nos. 33-9128; 34-62544; IC-29367; File No. S7-15-10 (July 21, 2010) available at <http://sec.gov/rules/proposed/2010/33-9128.pdf>. The proposal would also amend Rule 6c-10 under the investment Company Act to allow mutual funds the option of issuing shares at net asset value to broker-dealers, who could then establish and collect commissions or other sales charges to pay for distribution. The Rule 12b-1 initiative contains four basic elements:

- New "marketing and service fees" under proposed Rule 12b-2;
- New "ongoing sales charges" under amended Rule 6c-10;
- New and revised disclosure requirements related to marketing and service fees and ongoing sales charges; and,
- A new option for "account level sales charges" where mutual funds issue shares at net asset value to broker-dealers, who establish and collect their own commissions and sales charges related to those shares.

The Rule 12b-1 proposal would require mutual funds to provide revised or additional prospectus disclosures concerning their use of marketing and service fees and ongoing sales charges. The proposal would also require broker-dealers to provide enhanced disclosures on transaction confirmations concerning the imposition of marketing and service fees, ongoing sales charges, and other charges. This reverses prior SEC guidance, which permits broker-dealers to exclude from confirmations information about mutual fund sales charges if the investor received a prospectus containing that information. Under the proposal, broker-dealers would be required to provide the following categories of information in their confirmation statements:

- The amount of any-front and sales charge in percentage in dollar terms, together with the net dollar amount invested and any applicable breakpoints;
- The maximum amount of any deferred sales charge, as a percentage of net asset value at time of purchase or redemption;
- The annual amount of any marketing and service fees or ongoing sales charges and the aggregate amount of ongoing sales charges that may be incurred over time, both expressed as a percentage of net asset value, and the maximum number of months or years that the investors will pay ongoing sales charges;
- A statement to the effect that the investor will indirectly pay other-asset based fees charged by the mutual fund, such as management fees in addition to any marketing and service fees or ongoing sales charges; and,
- For redemptions, the amount of any deferred sales charge incurred or to be incurred, expressed in dollars and as a percentage of net asset value.

ACLI submitted a [letter of comment](#) with the SEC on this matter, which remains outstanding.

**SEC Point-of-Sale and Confirmation Proposal.** Another related, pending initiative includes the SEC's proposed point-of-sale and confirmation initiative that would require broker-dealers to provide customers with targeted information about costs and conflicts of interest in the sale of mutual funds, college savings plans, and variable insurance products. The release specifically invited comment on the appropriateness of written point-of-sale disclosure for variable annuities and variable life insurance. See Release No. 33-8544; 70 Fed. Reg. 42 (March 4, 2005). On January 29, 2004, the SEC initially proposed two new rules and rule amendments under the Securities Exchange Act of 1934 designed to enhance the information broker-dealers provide customers purchasing variable contracts, mutual funds, and college savings plans. The initiative elicited over 5,000 letters of comment. On March 24, 2005, the SEC reopened the comment period and invited supplemental input on a new "point-of-sale" document. The proposal would require "targeted information" at the point-of-sale about fees, charges, and broker-dealer conflicts of interest. The initiative also proposed amendments to the post-sale confirmation statements required under the federal securities laws.

The ACLI submitted [comments](#) on the proposal, noting that variable life insurance and variable annuity prospectuses promote informed purchase decisions and critical comparison shopping, including comparison of cost features. See <http://sec.gov/rules/proposed/s71004/cbwilkerson040405.pdf>. The SEC upgraded prospectus requirements for variable life insurance and variable annuities that provide plain-English disclosure and cost information in a clear fee table. Insurance and annuity purchasers have access to multiple sources of detailed information. In addition to the point-of-sale document, consumers also receive a prospectus, a variable contract, buyers' guides, NASD-approved sales literature, and replacement disclosure forms when a replacement is involved. Variable contracts are the only financial products in today's securities marketplace with free-look provisions. These features give consumers a meaningful opportunity to carefully evaluate purchases after the sale, and to change their mind for any reason, including cost factors.

**Department of Labor Action.** The Department of Labor ("DOL") recently published a proposal to greatly expand the definition of "fiduciary" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), for those who provide investment advice for a fee. See 75 Fed. Reg. 202 (Oct. 20, 2010) 64910, <http://edocket.access.gpo.gov/2010/pdf/2010-25725.pdf>.

recognize the multiple related proposals currently under consideration. Until these substantively interrelated initiatives have crystallized, it is important to factor them into the RFI calculus because all of the multiple proposals could impose duplicative or contradictory regulation and could cause a significant and expensive impact on systems, disclosure, and distribution arrangements. Multiple, sequential changes to these factors would invoke expensive operations overhauls.

### **(C) Appendix Materials**

We have highlighted and referenced the comprehensive regulatory structures faced by life insurers and their distributors in this letter. We have also provided more extensive discussion about the scope, nature, and evolving status of many of these laws and regulations in the attached appendix materials, especially as they affect the life insurance industry and the topics under study in the RFI.

### **XI. Conclusion**

We greatly appreciate the opportunity to express our views on the RFI. The continuation of the SEC's on-going study of broker-dealers and investment advisers is another significant step in response to Section 913 of the Dodd-Frank Act. It is essential to carefully consider the products, services, business models, and regulation that life insurers fulfill. This approach will provide a solid foundation to evaluate the collective economic impact of the regulation on broker-dealers and investment advisers affiliated with life insurers. This broad focus will constructively serve the SEC, investors and financial service distributors. If any questions develop or if we can provide any additional information, please let me know.

Sincerely,



Carl B. Wilkerson

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The proposed regulations would:

- Broaden the range of entities subject to ERISA's strict fiduciary framework. The DOL believes this change would discourage consultants from being influenced by "inappropriate fee arrangements."
- Expand the definition of "investment advice" to include appraisal services. This change is meant to primarily address abuses in the area of employee stock ownership plans by aligning the interests of an appraiser with those of the plan.

**FINRA Disclosure Concept Proposal.** FINRA has a pending disclosure concept in the delivery of investment advisory services. See [Regulatory Notice 10-54](#) (Oct. 27, 2020). FINRA determined that no matter how the ultimate contours of the SEC's harmonized standard of care concluded, "retail customers would benefit from an up-front disclosure document that sets forth in plain English a firm's accounts and services, its associated conflicts of interest and any limitations on duties owed to the customer." As conceived by FINRA staff, a possible new rule proposal would require a broker-dealer, at or prior to commencing a business relationship with a retail customer, to provide to the customer a written statement that sets forth the types of brokerage accounts and services the firm provides to retail customers and the conflicts associated with such services. ACLI filed a [comment](#) on this disclosure concept.

**NAIC in Suitability in Annuity Transaction Model Regulation.** As summarized in greater detail in Appendix A, this model regulation imposes significant suitability and supervision standards in the sale of fixed and variable annuities. The accompanying outline in Appendix A is followed by a law survey summarizing that virtually all jurisdictions have adopted one of several versions of the regulation that continue to be harmonized in the states.

Cc: The Honorable Mary Jo White, Chairman  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner  
The Honorable Daniel M. Gallagher, Commissioner

**APPENDIX “A” Appears on the immediately following pages.**



## Appendix A

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## **A Comprehensive System of State Regulation Governs The Distribution of Insurance and Annuity Contracts**

Carl B. Wilkerson, Vice President & Chief Counsel-Securities & Litigation  
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### **State Insurance Regulation**

Through a network of statutes and regulations, state insurance departments heavily regulate the operations, products, and sales of life insurance companies. Life insurers and their salespersons must satisfy this regulatory structure in their state of domicile and every jurisdiction in which they distribute life insurance and annuities. Uniformity of regulation is accomplished throughout the states by means of model statutes and regulations promulgated by the National Association of Insurance Commissioners (the “NAIC”).

Many of the insurance statutes and regulations promulgated and enforced by state insurance departments fulfill regulatory goals quite similar to those of the SEC, FINRA and state securities administrators, particularly regarding suitability, supervision, market conduct and disclosure. The summary below highlights the broad scope and comprehensiveness of selected state insurance statutes and regulations.

While only a small portion of the larger universe of state insurance regulation, these highlighted regulations are directly relevant in evaluating the regulatory structure governing insurance salespersons engaged in the delivery of personalized recommendations about securities to retail customers through investment advisers or broker-dealers. This discussion is intended to provide a general overview of state insurance regulation relevant to the SEC’s RFI and to provide additional foundation for the companion outline materials to this Appendix A.

### **Unfair Trade Practices**

Virtually every state has enacted a version of the NAIC Model Unfair Trade Fair Practices Act which was developed to regulate trade practices in the insurance business by defining and prohibiting practices that constitute unfair methods of competition or unfair deceptive acts or practices.<sup>1</sup>

A variety of the activities defined to be unfair trade practices directly parallel the purpose and scope of federal and state securities laws. Section 4(A) involves misrepresentations and false advertising of insurance policies, and identifies unfair trade practices to include any estimate, illustration, circular or statement, sales misrepresentation, omission or comparison that misrepresents the benefits, advantages, conditions or terms of any policy, among other things.

<sup>1</sup>This model statute governs items previously subject to Section 5 of The Federal Trade Commission Act. Congress observed that continued regulation of insurance by the states was in the public interest. See, legislative history of NAIC Unfair Trade Practices Act, NAIC Model Regulation Service at 880-20(2010).

Section 4(B) involves false information and advertising generally. This provision defines an unfair trade practice to include making, publishing or disseminating in a newspaper, magazine or other publication, on any radio/television station any assertion, representation or statement about an insurer or its business, which is untrue, deceptive or misleading.

Knowingly making any false statement of any material fact to insurance regulators, or in documents that will be publicly disseminated, is defined to be an unfair trade practice in Section 4(B) of the Model Unfair Trade Practices Act. This proscription is consistent with the truthfulness and accuracy of reports, records and representations required by FINRA and the SEC under the federal securities laws.

Section 4(J) involves the failure to maintain marketing and performance records, and defines as an unfair trade practice the failure of an insurer to maintain its books, records, documents, and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year in the two preceding years must be maintained under this standard. This provision directly parallels the scope and purpose of FINRA Rules 4510 and 4520 regarding books and records.

Section 4(K) defines the failure of any insurer to maintain a complete record of all the complaints it received since the date of its last market conduct examination to be an unfair trade practice. The records of complaints must indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint and the time it took to process each.<sup>2</sup> For purposes of this subsection, the term “complaint” means any written communication primarily expressing a grievance.

Like state securities administrators, insurance commissioners have the power to examine and investigate the affairs of every insurer operating in the insurance department’s state “in order to determine whether such insurer has been or is engaged in any unfair trade practice prohibited by [the Unfair Trade Practices Act].”<sup>3</sup> Several provisions embellish this important authority.

For example, Section 7 of the Unfair Trade Practices Act gives insurance commissioners extensive authority to initiate hearings concerning unfair trade practices, to compel witnesses, appearances, production of books, and service of process. Section 7 sets forth detailed administrative and procedural practices, in order to assure due process and quasi-judicial formality.

Section 8 of the Unfair Trade Practices statute authorizes insurance commissioners finding insurers guilty of unfair trade practices to issue written findings and enforcement orders requiring the insurer to cease and desist from engaging in the act or practice. The insurance commissioner also has the discretionary authority to suspend and revoke the insurer’s license if the insurer knew or reasonably should have known that its conduct violated the Unfair Trade

<sup>2</sup>The NAIC has also promulgated a Model Regulation for Complete Records to be maintained pursuant to Section 4(K) of the NAIC Unfair Trade Practices Act. See, NAIC Model Regulation Service at 844-1 (2010). This regulation sets forth a complaint record form, content requirements, maintenance requirements, and standards concerning the format of complaint records.

<sup>3</sup> See Section 6, Power of Commissioner, Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-9(2010).

Practices Act, and to order penalties of \$1,000 for each violation up to an aggregate penalty of \$100,000, unless the violation was committed flagrantly in conscious disregard of the act, in which case the penalty may be up to \$25,000 for each violation to an aggregate total penalty of \$250,000. A similar monetary violation may be imposed under Section 11 for violations of cease and desist orders. The act also provides for judicial review of insurance commissioner orders and authorizes immunity from prosecution for witnesses who attend, testify or produce books, records or other paper correspondence.<sup>4</sup>

These significant powers that may be used by insurance commissioners to enforce violations of unfair trade practice proscriptions, together with the recordkeeping, reporting and inspection powers of the Act, provide a package of regulatory tools directly analogous to state securities codes, the FINRA Rules and SEC regulations governing market conduct practices and the prosecution of violations. In a sum, the unfair trade practice laws provide meaningful proscriptions that are relevant to the RFI and its elicitation of other regulatory requirements governing the activities of broker-dealers and investment advisers in providing personalized recommendations about securities to retail customers.

### **NAIC Model Fraud Laws and Fraud Legislation**

Enactment of state fraud statutes represents another significant insurance regulatory development. Recent market conduct issues have resulted in some insurance departments requiring insurer management to assume increased responsibility for supervision of sales activities. Other states have taken an approach similar to that of New York and Pennsylvania by requiring insurer review of market conduct compliance, thus placing direct responsibility at the corporate officer level. This widespread action dovetails with the objectives of the Federal Crime Control Statute and the Federal Sentencing guidelines, discussed below.

While states have taken different approaches to the issue, the majority of states addressing the fraud issue enacted legislation similar to the NAIC Model Fraud Laws.<sup>5</sup>

### **Market Conduct Examinations**

Nearly every jurisdiction has enacted a version of the NAIC Model Law on Examinations.<sup>6</sup> This Act is designed to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in each state and concerning individuals otherwise subject to the insurance commissioner's jurisdiction. The Act is intended to enable commissioners to adopt a flexible system of examinations and allocate resources deemed appropriate and necessary for the administration of the insurance laws of each state. The Model Law on Examinations sets forth standards for the conduct of examinations, commissioner authority, scope, and scheduling of examinations. It also details the scope of examination reports which shall be comprised of only facts appearing

<sup>4</sup>See Sections 8, 9, 10, 11 and 14 of the Model Unfair Trade Practices Act, NAIC Model Regulation Service at 880-10 through 13 (2010).

<sup>5</sup>See NAIC Insurance Fraud Prevention Model Act, NAIC Model Regulation Service at 680-1 (2010).

<sup>6</sup>See NAIC Model Regulation Service at 390-1 (2010).

on books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined.<sup>7</sup>

Significantly, this Model Act dovetails with the NAIC Market Conduct Examiner's Handbook, an extremely detailed manual for examiners to assure that examiners follow comprehensive, uniform practices and procedures. The Examiner's Handbook is divided into seven different sections and contains 58 different standards. Among other things, the Examiner's Handbook addresses complaint handling, marketing and sales, producer licensing, and company operations/management.<sup>8</sup>

<sup>7</sup>See Sections 3, 4, and 5 of the Model Law on Examinations, NAIC Model Regulation Service at 390-5 (2010). Section 5 also sets forth detailed provisions for orders and administrative procedures in the conduct of hearing and adoption of a report on examination.

<sup>8</sup>Certain standards under the complaint handling section illuminate the depth and scope of the market conduct examination. Several standards are set forth below in this note as representative examples.

#### **Complaint Handling-Standard 2**

The company has adequate complaint handling procedures in place and communicates such procedures to policyholders.

##### **Review Procedures and Criteria**

Review manuals to verify complaint procedures exist. Procedures in place should be sufficient to require satisfactory handling of complaints received as well as internal procedures for analysis in areas developing complaints. There should be a method for distribution of and obtaining and recording response to complaints. This method should be sufficient to allow response within the time frame required by state law.

Company should provide a telephone number and address for consumer inquiries.

#### **Complaint Handling-Standard 3**

The company should take adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations and contract language.

##### **Review Procedures and Criteria**

Review complaints documentation to determine if the company response fully addresses the issues raised. If the company did not properly address/resolve the complaint, the examiner should ask company what corrective action it intends to take.

##### **Commentary:**

Reference to the examiner's general instructions on Handbook page VIII-14 (November 1995) reveals that an inquiry broader in scope than the mere resolution of a given complaint is expected. For example, the Handbook contains the following instructions: "The examiner should review the frequency of similar complaints and be aware of any pattern of specific type of complaints....Should the types of complaints generated be cause for unusual concern, specific measures should be instituted to investigate other areas of the company's operation."

#### **Complaint Handling-Standard 4**

The time frame within which the company responds is in accordance with applicable statutes, rules, and regulations.

##### **Review Procedures and Criteria**

Review complaints to ensure company is maintaining adequate documentation. Determine if the company response is timely. The examiner should refer to state laws for the required time frame.

The NAIC has continuously and significantly revised the Market Conduct Examiner's Handbook to maintain its importance as the life insurance market has evolved. The NAIC, together with industry input, sought to expand and enhance tools fostering the detection and prevention of marketplace abuse in the life insurance industry. Market conduct examinations are extremely comprehensive and serve as a means of positive reinforcement, by discouraging deficient practices that will be detected on examination, resulting in remedial action, and insurance department intervention.

### **Agents' Licensing and Testing**

The NAIC Agents and Brokers Licensing Model Act,<sup>9</sup> which appears virtually in every state, governs the qualifications and procedures for licensing insurance and annuity agents and brokers. This model law sets forth examination and licensing standards in great detail, and has a specific category for variable annuities and variable life insurance contracts. Licensed salespeople must be deemed by the insurance commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. Insurance brokers must also fulfill experience requirements. Section 8 of this regulation governs license denial, non-renewal and termination, giving the insurance commissioner broad discretion to suspend, revoke or refuse to issue or renew a license upon finding any of a variety of conditions including materially untrue statements, violation or noncompliance with insurance laws, withholding, misappropriating or converting customer moneys, conviction of a felony or misdemeanor involving moral turpitude, forgery, or cheating on licensing examinations, among other things.

### **Agent Investigation: Character and Background Investigation Requirements**

Most jurisdictions require that insurance producer license applicants be competent, trustworthy, and of good moral character in order to obtain a license. However, some now expressly require appointing insurers to certify that they have investigated the applicant's character and background and have found the applicant to be qualified and worthy of a license. Similar to FINRA, some jurisdictions implement fingerprinting as part of the background check. Related to these requirements is the portion of the NAIC Producer Licensing Model Act that allows the commissioner to refuse to issue an insurance producer's license if the commissioner finds that the individual has committed any act that is a ground for denial, suspension or revocation of the license. A law survey on this topic appears at the end of this segment of the appendix.

### **Continuing Education for Agents and Brokers**

In granting insurance agents and brokers licenses, most states also impose significant continuing education standards that parallel in objective and scope the continuing education standards recently developed by the securities industry together with the NASD. As in other areas seeking uniformity, the NAIC has promulgated the Agents and Brokers Licensing Model Act.<sup>10</sup> Under Section 5 of this model regulation, licensed agents must annually satisfy courses or programs of instruction approved by insurance commissioners in each state according to a minimum number of classroom hours, which typically is in the range of 25 class room hours per year for life and annuity salespersons. The courses include those presented by the Life

<sup>9</sup> See NAIC Model Regulation Service at 210-1 (2010).

<sup>10</sup> See NAIC Model Regulation Service at 215-1 (2010).



Underwriter Training Council Life Course Curriculum, the American College's Chartered Life Underwriter and Chartered Financial Planner curriculum, and the Insurance Institute of America's programs in general insurance, for example. Like FINRA's initial and ongoing educational requirements for registered representatives, state insurance regulators understand that testing, licensing and demonstration of continued competence through continuing education is critically important in the distribution of insurance and annuity products. A law survey on this topic appears at the end of this segment of the appendix.

### **Variable Contract Statutes**

Life insurance companies are authorized to issue separate accounts funding variable life insurance and annuity contracts upon fulfilling a variable contract statute in their domestic state, which typically follows the NAIC Model Variable Contract Law.<sup>11</sup> This NAIC model statute gives the insurance commissioner exclusive authority to regulate the issuance and sale of variable contracts and to issue rules and regulations appropriate to carry out the act's purpose. This model act and associated regulations that appear under state insurance law gives an additional, important measure of regulatory scrutiny and purchaser protection.

### **Insurance Producer Database**

From a market conduct perspective, life insurers have committed to a single, industry-accessible national producer database to facilitate their ability to track pertinent information regarding licensed producers. Access to information having a bearing on the producer's background, qualifications and competency is a valuable tool to insurers in the employment/appointment screening process. Moreover, widespread availability of such information makes it more difficult for a producer with significant disciplinary history to continue illegal or unethical practices by "company jumping."

NIPR ([National Insurance Producer Registry](#)) is a non-profit affiliate of the National Association of Insurance Commissioners (NAIC). It was created in October 1996 to develop and operate a national repository for producer license information (PDB) and to establish a network to facilitate the electronic exchange of producer information.

The Producer Database (PDB) is an electronic database consisting of information relating to insurance agents and brokers (producers) accessible through the NIPR Gateway on a subscription basis through the Internet. Internet PDB links participating state regulatory licensing systems into one common system establishing a repository of producer information. Internet PDB also contains or references producer information from sources such as the Regulatory Information Retrieval System (RIRS) of the NAIC. Its development is based, in part, on the belief that the widespread availability of such information will make it more difficult for a producer with significant disciplinary history to continue illegal or unethical practices.

The NIPR Gateway is an electronic communication network that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information; including license applications, appointments, and terminations. To date, data standards have been developed for the exchange of appointment and not-for-cause

<sup>11</sup> See NAIC Model Regulation Service at 260-1 (2010).

termination information. All data flowing through the NIPR Gateway will conform to these standards.

Through Internet PDB, industry is able to access all public information related to a producer provided by participating states, including licensing, demographics and final regulatory actions. The product is designed to assist insurers in exercising due diligence in the monitoring of agents and brokers to reduce the incidence of fraud. Currently, Internet PDB contains information on over 2.9 million producers. Information available includes:

- Demographics-name, date of birth, addresses
- License Summary-state of license, license number, issue date, expiration date, license type/class, residency, lines of authority, status, status reason, status/reason effective date.
- Continuing Education-CE compliance indicator, CE renewal date, CE credits needed.
- Certificates and Clearance-date issued, issuing state, receiving state, certification or clearance indicator.
- Regulatory Actions-state of action, date, entity role, origin of action, reason for action, penalty/fine/forfeiture, effective date, file reference, time/length of dates.
- Appointment Information-Effective date, termination date, reasons for termination.

Currently all 50 states, DC and PR participate in the PDB.

In many respects, this new producer data base parallels the purpose and scope of FINRA's Central Records Depository or CRD. Through the NIPR data base, problem producers can be tracked and deterred from the insurance business.

### **Concluding Observations**

Collectively, the NAIC statutes and regulations provide a significant network of comprehensive regulation over many important aspects affecting the marketing and sale of variable contracts that closely reflect the purpose and scope of the issues under examination through Section 913 of the Dodd-Frank Act. It remains important to include the scope of state insurance regulation in the development of regulatory recommendations in response to the RFI.

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**NAIC Suitability in Annuity Transactions Model Regulation: A Coordinated Approach to Suitability and Supervision in the Sale of Individual Annuity Contracts**

Carl B. Wilkerson, Vice President & Chief Counsel-Securities & Litigation  
American Council of Life Insurers © 2013 All Rights Reserved.

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**I. Recent NAIC Modifications Enlarge Suitability and Supervision Responsibilities in NAIC Model Regulation Governing Individual Annuity Sales**

A. The National Association of Insurance Commissioners (NAIC) adopted several evolving sets of revisions to its model regulation governing suitability and supervision in the sale of individual annuity contracts.

1. The NAIC's initial regulation was entitled the Senior Protection in Annuity Transactions Regulation, and governed suitability and supervision in annuity transactions with "senior consumers" age 65 or older.
2. The NAIC's 2006 revision to this regulation applied it to all individual annuity sales. To reflect the broader application of the regulation, it was re-titled the Suitability in Annuity Transactions Model Regulation. This regulation incorporated suitability and supervision practices parallel to those under the federal securities laws and FINRA rules.
3. In 2010, the NAIC added further amendments to the Suitability in Annuity Transactions Model Regulation. Among other things, the 2010 NAIC revisions to the regulation established new restrictions on supervisory delegation to third-party and reliance on producer suitability recommendations, established a new producer training requirement (which must be completed by producers prior to their being able to solicit the sale of annuities), and expanded powers of Commissioners to levy sanctions and penalties.

B. The evolving iterations of the NAIC model regulation can be found at NAIC Model Regulation Service II-275-1 (2010). Over 30 states have implemented the 2010 version of the model regulation and two have proposed the regulation for adoption. 14 states have adopted the 2006 version of the regulation. Over time, these states are expected to incorporate the 2010 revisions as they update their regulations.

C. The accompanying Issues Status Chart in this appendix on the Suitability in Annuity Transactions Model Regulation, the Annuity Disclosure Regulation, and the Senior-Specific Certification Model Regulation is **current as of July 2, 2013**, and contains citations to state laws and regulations, with explanations, to each of the respective models.

D. **Because the 2010 amendments to the model regulation are built upon the original 2006 model, the 2006 model is discussed first. The 2010 changes to the**

model are summarized separately below, following the 2006 regulation's summary.

E. ACLI supports strong suitability standards to ensure annuity sales recommendations are suitable and will promote consumer confidence in making informed annuity purchase decisions.

## **II. Approach of the 2006 Revised NAIC Regulation**

A. The regulation establishes standards and procedures governing recommendations in annuity transactions, to ensure “that insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.”

B. The regulation imposes suitability and supervision duties for insurers and insurance producers, including requirements for maintaining written procedures and conducting periodic reviews of records to detect and prevent unsuitable sales practices.

## **III. Scope and Governing Framework of the 2006 Revised NAIC Regulation**

A. The regulation applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

1. “Annuity” means a *fixed annuity or variable annuity* that is *individually solicited*, whether the product is classified as an individual or group annuity [Section 5 (A)].
2. “Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice [Section 5(D)].

B. The regulation does not apply to annuity transactions involving:

1. Direct response solicitations where there is no recommendation based on information collected from the consumer under the regulation;
2. Contracts funding specified retirement plans:
  - a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
  - c) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred

compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

3. Settlements of, or assumptions of, liabilities associated with personal injury litigation or any dispute or claim resolution process; or

4. Formal prepaid funeral contracts.

#### **IV. Duties Imposed Under the Regulation [Section 6]**

**A. Suitability Standard:** In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

1. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

2. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

3. Note: this suitability standard directly parallels the general standard of FINRA Suitability Rule 2310(a), set forth at <http://nasd.complinet.com/nasd/display/display.html?rbid=1189&elementid=1159000466>.

**B. Suitability Ingredients [Section 6(A)]:** Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

1. The consumer’s financial status;

2. The consumer’s tax status;

3. The consumer’s investment objectives; and

4. Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

5. Note: the suitability ingredients above precisely track those in FINRA Suitability Rule 2320(b) set forth at

<http://nasd.complinet.com/nasd/display/display.html?rbid=1189&elementid=1159000466> .

6. An insurer or insurance producer's recommendation under the suitability standard and ingredients must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation [Section 6(c)(2)].

a) Neither an insurance producer, nor an insurer where no producer is involved, has any obligation to a consumer under the suitability standard [Section 6(a)] related to any recommendation if a consumer:

(1) Refuses to provide relevant information requested by the insurer or insurance producer;

(2) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(3) Fails to provide complete or accurate information.

(4) Note: these narrow exclusions directly parallel FINRA approaches to suitability in Rule 2310.

### C. Supervision Standard

1. For insurers:

a) An insurer either (i) shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with the suitability standards in the regulation is established and maintained, or (ii) shall establish and maintain such a system, including, but not limited to:

(1) Maintaining written procedures; and

(2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

b) To fulfill the supervision standard, an insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Section 6(D)(1) regarding insurance producers under contract with, or employed by, the third party.

(1) To utilize a third party for supervision, an insurer must make reasonable inquiry to assure that the third party is performing the functions required under the regulation, and must take reasonable action under the circumstances to



enforce the contractual obligation of the third party to perform the functions.

(2) An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(a) Annually *obtain a certification* from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(b) Based on reasonable selection criteria, periodically select third parties for review to determine whether the third parties are performing the required functions. The insurer must perform those procedures to conduct the review that are reasonable under the circumstances.

c) Insurers that contract with a third party to perform supervision and that comply with the certification and periodic review procedures will fulfill their supervisory responsibilities under the regulation.

d) Note: the supervisory approaches implemented in the regulation parallel those in FINRA Rule 3010(a).

e) No one may provide a certification under the regulations supervisory delegation unless:

(1) The person is a senior manager with responsibility for the delegated functions; and

(2) The person has a reasonable basis for making the certification

2. For insurance producers:

a) A general agent and independent agency either must (i) adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with the regulation, or (ii) establish and maintain such a system, including, but not limited to:

(1) Maintaining written procedures; and

(2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

3. Scope of required system of supervision for insurers and producers:
  - a) An insurer, general agent or independent agency is not required to review, or provide for review of, all insurance producer solicited transactions; or
  - b) An insurer, general agent or independent agency is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.
  - c) Note: these clarifications to the scope of the supervisory requirements parallel those applied under FINRA Rule 3010.
4. Deference to FINRA Suitability rule for variable annuity sales:
  - a) Compliance with FINRA's suitability rule will satisfy the regulation's suitability requirements for variable annuity recommendations.
  - b) Deference to FINRA suitability standards and practices in variable annuity sales does not, however, limit the insurance commissioner's ability to enforce the regulation.

#### **D. Recordkeeping**

1. Insurers, general agents, independent agencies and insurance producers must maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [a specified number of] years after the insurance transaction is completed by the insurer.
2. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
3. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

#### **E. Enforcement Powers and Mitigation Provisions**

1. To implement the regulation, the state insurance commissioner may order:
  - a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

- b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and
- 2. Any applicable penalty under the state code may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

## **V. Observations on the NAIC Suitability in Annuity Transactions Model Regulation (2006 Revisions)**

A. The NAIC's 2006 modifications to, and substance of, the regulation directly address a number of public concerns about annuity regulation.

1. Applying the regulation to all ages provides coordinated suitability and supervision standards covering all individual annuity sales promotes state regulatory uniformity modeled on FINRA approaches to supervision and suitability.

2. FINRA advocated similar patterns of regulation for fixed and variable annuities under state and federal regulation in a number of public forums, including:

a) The May 5, 2006 Annuity Roundtable which is available by archived webcast at [http://www.nasd.com/RulesRegulation/IssueCenter/VariableAnnuities/NASDW\\_016465](http://www.nasd.com/RulesRegulation/IssueCenter/VariableAnnuities/NASDW_016465).

b) Statements of FINRA representatives:

(1) FINRA believes that "rules governing the marketing and sale of annuity products - regardless of whether the particular annuity is regulated as an insurance product or a security - should be comparable.... In partnership with the Minnesota Department of Commerce, FINRA is working with the Securities and Exchange Commission and state insurance and securities regulators to *bring the rules governing annuity sales, in both the insurance and securities regulatory regimes, into conformity.*" (emphasis added); Maxey, *American Equity CEO: Slower Indexed Sales Won't Hit Net*, Dow Jones Newswires October 13, 2006;

(2) *Mary Shapiro, Former FINRA Chairman & CEO stated:*

(a) "Last, let me bring to your attention our efforts to *harmonize requirements across other financial products that compete with securities.* Variable annuity sales compete with equity-indexed and plain vanilla annuities. Variable annuities are securities, equity-indexed annuities may not be

securities, yes the subject of another long and tortuous story, and plain vanilla annuities are not securities. These are *complex products in pricing, operation and structure* that may be purchased for similar purposes but are subject to *disparate levels of regulation and offer dissimilar levels of protection to investors.*" SIA Compliance & Legal Division Annual Conference (March 20, 2006)(emphasis added). Available at [http://www.nasd.com/PressRoom/SpeechesTestimony/MaryL.Schapiro/NASDW\\_016200](http://www.nasd.com/PressRoom/SpeechesTestimony/MaryL.Schapiro/NASDW_016200) .

(b) "The [post-annuity roundtable] working group will consider the issues of disclosure, suitability, supervision and marketing of fixed, variable and equity-indexed annuities. *Regardless of which regulator has jurisdiction over these products, investors deserve as level a playing field as possible.* When product lines blur and regulators' reach is limited, we have an important responsibility to ensure that we work closely together to ensure the highest quality of investor protection." NASAA Annual Conference (September 18, 2006) (emphasis added). Available at [http://www.nasd.com/PressRoom/SpeechesTestimony/MaryL.Schapiro/NASDW\\_017410](http://www.nasd.com/PressRoom/SpeechesTestimony/MaryL.Schapiro/NASDW_017410)

B. The life insurance industry has responded to the public observations and has acted to support and promote enactment of the revised NAIC Suitability in Annuity Transactions Model Regulation.

1. The American Council of Life Insurers (ACLI) endorsed the 2006 removal of the age 65 limitation in the scope of the NAIC Senior Protection in Annuity Transactions Model Regulation, and supports adoption of the NAIC Suitability in Annuity Transactions Model Regulation, and the NAIC Annuity Disclosure Model Regulation.

a) See ACLI Press Release, NAIC Senior Protection in Annuity Transactions Model Should Cover All Consumers, ACLI Says (Jan. 24, 2006) [The decision to support extending standards results from ongoing ACLI efforts to identify areas where the state laws or regulations governing annuity sales can be enhanced, and reflects a strong desire by U.S. life insurers to enhance Americans' retirement security]; available at <http://www.acli.com/ACLI/Newsroom/News%20Releases/Text%20Releases/NR06-004>

2. ACLI also established a CEO Task Force to develop constructive solutions to promote meaningful disclosure about annuities and suitable sales practices in September 2005 that has coordinated with FINRA and the SEC about a number of responsive industry developments in these

areas. A summary about ACLI's disclosure initiatives appears in a separate outline in this appendix.

## **VI. Overview of the Modifications in the 2010 Revised NAIC Suitability in Annuity Transactions Model Regulation**

- A. Insurance producers are required to obtain information about the customer's needs and financial objectives when formulating a recommendation for an annuity purchase and must have reasonable belief that the recommendation is suitable. (NAIC Model Sec. 6(A)&(B)).
- B. Insurers must assure that a system is in place to supervise compliance with the Model, including review of producers' recommendations. (NAIC Model Sec. 6(F)(1)(d)).
- C. An insurer must conduct reviews of its records to assist in detecting and preventing violations of the regulation. (NAIC Model Sec. 6(F)(1)(e)).
- D. )When an insurer contracts with a third party to establish a system of supervision, the insurer must monitor and audit, as appropriate, to assure that the third party is performing the required functions. (NAIC Model Sec. 6(F)(2)(b)(i)).
- E. When an insurer relies on a third party to perform required suitability functions, the third party, when requested by the insurer, must give a certification that it is performing the functions in compliance with the regulation. (NAIC Model Sec. 6(F)(2)(b)(ii)).
- F. Sales of annuities made in compliance with stringent federal securities rules pertaining to suitability and supervision (FINRA Rule 2330) satisfy the requirements under the Model. (NAIC Model Sec. 6(H)).
- G. An insurance producer shall not solicit the sale of an annuity unless the producer has adequate knowledge of the product and shall be in compliance with the insurer's product training standards. (NAIC Model Sec. 7(A)).
- H. Insurance producers who engage in the sale of annuities must complete an annuity training course approved by the appropriate State. (NAIC Model Sec. 7(B)).
- I. The Commissioner may order that an insurer or producer take appropriate corrective action for any consumer harmed by the insurer's, or producer's, violation of the regulation. (NAIC Model Sec. 8(A)(1)&(2)).

**VII. An ACLI Issues Status Chart follows this page, and provides an index and citations to every jurisdiction regarding the NAIC Suitability in Annuity Transactions Model Regulation, together with the NAIC Annuity Disclosure Model Regulation and the NAIC Senior-Specific Certifications Model Regulation.**

## Issue Status Chart: NAIC Annuity Disclosure, Suitability in Annuity Transactions, & Senior-Specific Certifications Model Regulations

(As of July 2, 2013)

The chart tracks state adoption of the NAIC Suitability (formerly Senior Protection) in Annuity Transactions Model Regulation, the NAIC Annuity Disclosure Model Regulation, Use of Senior-Specific Certifications and variations of the models. ACLI actively supports state adoption on a uniform basis of the NAIC Suitability in Annuity Transactions Model Regulation, the NAIC Annuity Disclosure Model Regulation, and Use of NAIC Senior-Specific Certifications.

### OVERVIEW OF STATE ACTIVITY TO DATE:

31 states have adopted NAIC Senior-Specific Certifications.

Alaska	Hawaii	Minnesota	New York	Rhode Island	Virginia
Arkansas	Illinois	Missouri	North Carolina	South Carolina	Washington
Colorado	Iowa	Nevada	Ohio	Texas	West Virginia
Connecticut	Kansas	New Hampshire	Oklahoma	Utah	Wisconsin
Dist. of Columbia	Kentucky	New Jersey	Oregon	Vermont	Wyoming
	Maryland				

17 states have adopted the NAIC Suitability in Annuity Transactions Model (2006 version).

Alabama	Georgia	Louisiana	Montana	North Carolina	Tennessee
Arkansas	Idaho	Maine	Nevada	Oklahoma	Virginia
Arizona	Indiana	Massachusetts	New Hampshire	Pennsylvania	

2 states have proposed the NAIC Suitability in Annuity Transactions Model (2010 version).

New York	Wyoming
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30 states have adopted the NAIC Suitability in Annuity Transactions Model (2010 version).

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ACLI Issue Status Chart

NAIC Annuity Disclosure, Suitability & Senior Designations

Alaska	Hawaii	Maryland	New York	South Dakota
California	Idaho	Michigan	North Dakota	Texas
Colorado	Illinois	Minnesota	Ohio	Utah
Connecticut	Iowa	Mississippi	Oregon	Washington
Dist. Of Columbia	Kansas	Nebraska	Rhode Island	West Virginia
Florida	Kentucky	New Jersey	South Carolina	Wisconsin

6 states have adopted the NAIC Senior Protection in Annuity Transactions Model Regulation.

Arizona	Delaware	Indiana
Arkansas	Florida	Nebraska

6 states have similar or related suitability standards.

Connecticut	Iowa	Missouri
Florida	Minnesota	Oregon

22 states have adopted the NAIC Annuity Disclosure Model Regulation (2006 version).

Alabama	Colorado	Missouri	New Jersey	Oklahoma	Utah
Alaska	Hawaii	Maine	New Mexico	Oregon	West Virginia
Arizona	Idaho	Montana	North Carolina	Rhode Island	
Arkansas	Kentucky	Nevada	Ohio	Texas	

0 states have proposed the NAIC Annuity Disclosure Model Regulation (2011 version)

1 state has adopted the NAIC Annuity Disclosure Model Regulation (2011 version)

Iowa

9 states have adopted variations of an older NAIC Model Regulation.

Florida	Maryland	New York	South Carolina	Wisconsin
Georgia	New Hampshire	Pennsylvania	Washington	

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(Updates in **bold**.)

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>ALABAMA</b>					
Ch. 482-1-129.05		X		Adopted 2006.	Similar to the NAIC Annuity Disclosure Model.
Ch. 482-1-137	X			Adopted 2006.	Similar to the NAIC Suitability Model.
<b>ALASKA</b>					
Reg. 3 AAC 26.770+  ACLI Comments	X			Reg. Effective: 10/16/11  Product Specific Training Requirement (Agents licensed as of regulation effective date): 1/16/12  Product Specific Training Requirement (Agents licensed after regulation effective date): Immediate  Annuity Training Course Requirement (Agents licensed as of regulation effective date): 4/16/12  Annuity Training Course Requirement (Agents licensed after regulation effective date): Immediate	Adopted regulation more closely tracks the revised NAIC Suitability in Annuity Transactions Model Regulation. Several changes were made based on ACLI's written comments.  ACLI has requested an extension of time for compliance with the new rules, in an October 27 letter to Director Linda Hall.  ACLI staff discussed with Insurance Division staff our October 27 written request for an extension of time in which to comply with the Division's Suitability in Annuity Transactions Regulation adopted on October 16. Division staff said that while there will be no written/formal extension for compliance with the rules because of the Division's lack of authority to give such an extension, they will, however, be lenient in enforcement and will give companies a reasonable period of time in which to comply with the regulation. When asked whether a six month period in which to comply would be considered "reasonable" by the Division, staff responded affirmatively, explaining that they would look at the circumstances of the particular company and its plan for implementation, taking into consideration any obstacles that may delay an insurer's compliance. Insurers in need of further assurance on compliance are encouraged to contact the Insurance Division.
Overview of recent adopted regulations					The Insurance Division adopted permanent regulations relating to annuity disclosure, suitability, and replacements, as previously posted to the ACLI Web site on July 2. ACLI staff has made separate comparisons between the adopted rules and the NAIC Annuity Contract Disclosure Model Regulation, the NAIC Life Insurance Policy and Annuity Contract Replacements Model Regulation, and the NAIC Suitability in Annuity Contract Transactions Model Regulation for your review and information. Noted deviations between the adopted

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Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					regulations and the NAIC Models are: Suitability: No corresponding "purpose" section or "mitigation of responsibility" section in the adopted rule; Annuity Disclosure: No corresponding sections relating to "purpose", "penalties", and "severability" in the adopted rules; Replacement: No corresponding sections relating to "purpose", "violations/penalties", and "severability" in the adopted rules. The Alaska Administrative Procedures Act provides that regulations become effective 30 days after filing by the Lieutenant Governor, and the adopted regulations are published quarterly in the Alaska Administrative Register. There may still be unintended drafting errors in these adopted rules that may cause compliance concerns, and ACLI staff urges companies to advise us of any problematic language in the adopted rules that differs from the NAIC Models and that may require clarification from the Division for compliance purposes. Given past experience with Alaska rule adoption, the Division has not deviated from the effective date but has offered clarification with respect to ensuring compliance with the rules.
Adopted Regulation 3 AAC 26.750+ Adopted Regulation 3 AAC 26.770+	X	X		Effective July 25, 2008  Effective: July 25, 2008	
Bulletin B 09-07	X	X			Director Linda Hall issued Bulletin B 09-07 on August 6 reminding licensees and admitted insurers to comply with the record requirements in relation to regulations on suitability in annuity transactions, life insurance and annuity replacements, and annuity disclosures that became effective July 25, 2008. The bulletin places specific importance on records that must be kept in documenting the analysis and grounds for believing that a recommendation is suitable; documenting the reasonable efforts to obtain the necessary information to make a suitable recommendation; and documenting that the required disclosure have been provided.
Bulletin B 08-04	X				The Bulletin contains an overview of each regulation, stating that the regulations adopt the NAIC Suitability in Annuity Transactions Model Regulation and the NAIC Life Insurance and Annuities Replacement Model Regulation; however, it states that the disclosure regulation adopts, in substance, the NAIC Annuity Disclosure Model Regulation and highlights the differences between the Alaska disclosure document and the NAIC Model.

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Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Notice Of Proposed Changes In The Regulations Of The Division Of Insurance			X		The Insurance Division has published a Notice of proposed new rules relating to the use of senior-specific certifications and professional designations in connection with a solicitation, sale or purchase of, or advice made in connection with a life insurance or annuity contract by an insurance producer.
Reg. 3 AAC 26.820+			X	Effective: 6/28/09	Establishes standards and requirements for the use of senior-specific certifications and professional designations in the solicitation, sale, purchase, or advice made in connection with a life insurance or an annuity contract by an insurance producer. The rules substantively follow the NAIC model regulation, except the rules use the term annuity "product" instead of "contract", includes a non-model provision in 3 AAC 26.825(a)(2) adding "oral statements or representation", and omits NAIC Model language, "There is a rebuttable presumption", at the beginning of 3 AAC 26.825(c).
<b>ARKANSAS</b>					
Rule 82	X			Effective: 7/15/09	The rule, which deviates substantially from the NAIC model regulation, establishes standards for insurers and insurance producers in the sale of annuities, including a required four hours of suitability training for producers.  The Insurance Department issued Bulletin 5-2010 regarding suitability training requirements that were established by Rule 82. Until the rule is revised, the department will not enforce the four hour training requirement.
Bulletin 5-2010	X			Dated: 6/28/10	
Directive 2-2006					
Rule 96			X	Effective: 7/15/09	Establishes standards and requirements for the use of senior-specific certifications and professional designations by an insurance producer in the sale of life insurance and annuities.
Rule 98		X		Effective: 7/15/09	The new annuity disclosure rule by and large adheres to the NAIC model. It deviates from the model in that it adds a provision to the disclosure document and buyer's guide standards stating that disclosure statements must be signed and dated by the insurance producer and maintained by the producer and issuing company for five years. And, as in the revised version of the rule, the scope now incorporates pre-need policies.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
ARIZONA					
Rev. Stat. Ann. §§ 20-1243+	X			Enacted 2006. (HB 2162)	Similar to the NAIC Suitability Model.
Rev. Stat. Ann. §§ 20-1242+		X		Enacted 2003.	
Admin. Comp. R20-6-212.01		X		Adopted 2004.	
CALIFORNIA					
A. 689 ACLI Comments	X			Signed by Governor: 9/20/11  Bill Effective: 1/1/12  Product Specific Training Requirement: 1/1/12  Annuity Training Course Requirement (Agents Licensed Prior to Bill Effective Date): 1/1/12  Annuity Training Course Requirement (Agents Licensed After Bill Effective Date): Immediate	Enacts the NAIC Suitability in Annuity Transactions Model Regulation with some deviations. Deviations include: 1) bill language does not reference private cause of action; 2) under definition of "Suitability information" whether or not the consumer has a reverse mortgage is included in the criteria for the appropriate determination of the suitability of the recommendation; 3) the bill uses 60 months as the timeline for an exchange or replacement of another annuity and the Model uses 36 months; 4) Provides for certain limitations on the sale of replacement annuities for persons over 65; 5) producer training Model language requires one "four" hour credit training course for an insurance producer who engages in the sale of annuity products and the bill requires one "eight" hour credit course. Bill also requires four education hours every two years; 6) requirement to recognize if the person lacks short term memory or judgment and 7) language of bill refers to amendments to the regulations not to be inconsistent with Dodd-Frank Act.
Dept. of Insurance Notice				Dated: 12/6/11	Notice to licensed insurers clarifies California Department of Insurance annuity training requirements. Insurance producers shall not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. The hours of training needed before soliciting consumers to sell annuities and hours of training needed for license renewal are also outlined in the notice. The new requirements become effective January 1, 2012.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>COLORADO</b>					
Reg. 4-1-11	X			Effective: 8/1/11	Amends existing Reg. 4-1-11 which went into effect on April 1, 2011. Amends the existing suitability rule, to modify sections on definitions, insurers and insurance producer duties, producer training requirements, severability, and enforcement. Also adds replacement of annuities to be covered under the provisions of the regulation. Follows the NAIC model with minor deviations.
Reg. 4-1-11	X			Reg. Effective: 4/1/11 Product Specific Training Requirement: 4/1/11 Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date): 10/1/11 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): Immediate	Amendments to the annuity suitability regulation, follows the NAIC model regulation with minor deviations, require additional training for those selling annuities. Also adds requirements for determining suitability of annuity transactions and provisions for record keeping and management responsibilities regarding monitoring suitability.
Reg. 4-1-12		X		Effective 1/1/07.	Offers criteria for the disclosure of specified data about annuity contracts to make certain that purchasers comprehend essential aspects of the contracts.  Re-proposed to change sections including requiring a free look period of at least 15 days at or prior to the time of application in the absence of a Buyer's Guide and a disclosure document and having the reg. apply to contracts sold on or after 1/1/07, the same day the amended reg. becomes effective.
Reg. 1-2-18			X	Effective: 6/1/09	Establishes standards and requirements for the use of senior-specific certifications and professional designations in the solicitation, recommendation, sale or acquisition of life insurance and annuity products.
<b>CONNECTICUT</b>					
Reg.38a-432-1+	X			Reg. Effective: 2/18/12 Product Specific Training Requirement: 2/18/12 Annuity Training Course Requirement (Agents	Amends requirements for suitability in the sale of annuities, including the purchase, exchange, and replacement of annuities. Allow the commissioner to reduce penalties for violations deemed not part of a pattern or practice. Include new producer training requirements, amended criteria for determining suitability, and amended duties for insurers and producers. Follows the revised

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Bulletin L-18	X			Licensed Prior to Reg. Effective Date): 8/18/12 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): Immediate  Dated: 12/19/11	NAIC model.  Bulletin is in response to questions received regarding regulation on suitability in annuity transactions training for insurance producers that will take effect on February 18, 2012. The bulletin provides responses to questions on the mandated sections of the regulation but only address the general four-credit annuity training course for producers.
Reg. 38a-432b-1+			X	Effective: 7/7/2010	Establishes standards and requirements for the use of senior-specific certifications and professional designations in the sale of insurance, including annuities.
Reg. 38a-432a-1+	X			Effective: 11/10/08	The regulation amends provisions on suitability in annuity transactions to include all consumers by deleting references specific to seniors and the definition of a "senior consumer."
Act 05-57	X*			Enacted 2005. (SB 6622)	*Enabling legislation authorizing the Insurance Commissioner to adopt regulations to establish (1) standards for the sale or exchange of annuities to sr. consumers and (2) procedures for making recommendations to sr. consumers regarding the sale or exchange of an annuity.
Reg. 38a-432a-1 et seq.	X			Adopted 2005.	Similar to the NAIC Senior Protection Model.
<b>DELAWARE</b>					
Reg. 1214	X			Adopted 2005.	Similar to the NAIC Senior Protection Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>DISTRICT OF COLUMBIA</b>					
Rule 8400+	X			Reg. Effective: 12/24/10 Product Specific Training Requirement: 6/24/11 Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date): 12/24/11 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): Immediate	New regulation establishes requirements for determining consumers' suitability prior to the recommendation or sale of an annuity. Also includes producer training and record retention requirements. Regulation is substantially similar to the 2010 NAIC Suitability in Annuity Transactions Model.
Rule 5800+			X	Effective: 7/30/10	Substantially similar to NAIC Senior Specific Certifications Model.
<b>FLORIDA</b>					
S. 166	X			Signed by governor: 6/14/13  Effective: 10/1/13	Provides that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers. Increases the period of time that an unconditional refund must remain available with respect to certain annuity contracts. Makes such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age; consistent with NAIC model guidance; incorporates Florida consumer protections; required suitability and comparison forms, cover page, limitation on deferred sales charges.
S. 2176		X		Effective: 1/1/11	Among other things, requires that the buyer's guide for fixed annuities be in the form provided by the National Association of Insurance Commissioners Annuity Disclosure Model Regulation and authorizes the use of policy summary as part of prospectus for variable annuities until the NAIC or the department develops a buyer's guide

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Prop. Rule 69B-215.235  ACLI Comment Letter			X	Effective: 11/16/11	The new rule on the use of designations clarifies that the only legal designations that may be used are ones permitted by established organizations retaining published criteria and practices guaranteeing the constant proficiency and ethical behavior of members or conferees and forbids the use of self-bestowed or baseless designations.
Rule 69B-162.011	X	X		Effective: November 15, 2009*  *Suitability Rule and Forms adopted on October 27th and as published on Florida Administrative Weekly website and FL DFS site stipulates an effective date of November 15. This is a clerical error on the part of Secretary State's office. The statute, which controls, provides an effective date of January 1, 2009 or 60 days following the adoption of the rule, which would be December 25th. The Joint Administrative Procedure Committee has advised FL DFS that the effective date provided in the rule is a "nullity" and should be disregarded. FL DFS is considering a General Bulletin to this effect.	Establishes the duties required of insurers and insurance producers in the sale of annuity contracts to senior consumers, including the purchase, exchange, and replacement of such contracts. Also incorporates by reference an annuity suitability questionnaire and an annuity contracts disclosure form.
S. 2082				Signed by Governor: 6/30/08.	Effective upon this act becoming a law, Department of Financial Services may adopt rules to implement this act. Sec. 9 of this act and such implementing rules shall take effect 60 days after date on which the final rule is adopted or 1/1/09, whichever is later.
Stat. § 626.99				Enacted 1982 and 1991.	Requires delivery of Annuity Disclosure Model Buyer's Guide.
Stat. § 627.4554	X			Enacted 2004. (SB 2994)	Applies to consumers over 65.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>GEORGIA</b>					
Admin. Comp. ch. 120-2-73				Enacted 1996.	Variation of the NAIC Annuity Disclosure Model.
Rule Ch. 120-2-94	X			Adopted 2006.	Similar to the NAIC Suitability Model.
<b>HAWAII</b>					
S. 2768	X			Signed by the Governor: 4/24/12 Retroactive Effective Date: 1/1/12	Section 14 amends existing producer training requirements pertaining to annuity sales, pursuant to NAIC Model requirements.
S. 1278	X		X	Signed by the Governor: 6/14/11  Bill (including Sr. Designations provisions) Effective: 7/1/11  Annuity Suitability Provisions (Sec. 2-6) Effective: 1/1/12  Product Specific Training Requirement: 1/1/12  Annuity Training Course Requirement: 1/31/12  Annuity Training Course Requirement (Agents Licensed after 1/13/12): Immediate	Adopts both the NAIC's Annuity Suitability and Senior Designations Models.  Revised Memorandum 2011-2LIC Informs insurance producers that the Insurance Division will recognize annuity training completed in another jurisdiction.
S. 1008	X			Signed by governor 7/5/07. Effective 1/1/08.	Enacts the NAIC's Suitability in Annuity Transaction Model Regulation. Amends "general agent" to read "managing general agent". Specifies applicability to an insurer, general agent, independent agencies, or a producer in terms of the penalty being reduced or eliminated for corrective action of a violation. Adds "failure to obtain information" as definition of unfair methods of

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					competition and unfair or deceptive acts or practices. Provides that nothing in this Act shall be construed to supersede in any manner any provision of the Uniform Securities Act and nothing shall affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the act's effective date.
Stat. § 431:10D-601 et seq.		X		Enacted 2006 (SB 2434)	Similar to the NAIC Annuity Disclosure Model.
<b>IDAHO</b>					
Rule 18.01.09	X			Reg. Effective: 4/4/13 Product Specific Training Requirement: See comments Annuity Training Course Requirement (Agents Licensed Prior to or on the Reg. Effective Date): See comments Annuity Training Course Requirement (Agents licensed after req. effective date): see comments	The Department of Insurance has permanently adopted Rule 18.01.09, which establishes standards and requirements for insurers and producers when recommending annuities to consumers. The rule is based on the NAIC model that includes provisions relating to insurer supervision, record keeping, producer training, FINRA compliance and transaction exemptions. The DOI had proposed the rules in September 2012. All proposed rules in Idaho are subject to legislative review and, if approved, become effective on the date of adjournment, which was April 4, 2013. An advisory bulletin was distributed to licensed producers on April 15, 2013.  In response to member concerns about the effective date of the rule, ACLI has held follow-up conversations with the Chief Deputy and Licensing Manager of the Idaho Department to discuss compliance implementation. The DOI has made clear that they do not have the power to move a legislatively determined effective date. However, they fully understand the challenges faced by companies and are working themselves to implement the new components of the rule.  The DOI states that it has no plans to conduct any enforcement actions with respect to the initial phase in of the rules. They do encourage companies to do the best they can to comply with the new rule and to document compliance activities. In the near future, the Idaho Licensing team will be publishing new information and guidance for the training and CE components. That publication will be circulated to those who received the earlier advisory and will be made available on the department's website as well.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
S. 1327	X			Signed by Governor: 4/8/10 Effective: 7/1/10	Adds s. 41-1941 to adopt key provisions of the NAIC model annuity disclosure law and allow the Director to adopt the remainder of the model by rule. The law contains two variations from the model: a 20-day free look provision reflecting current law, and a provision added by the Department of Insurance that requires the producer and company to obtain a signed copy of the disclosure document from the applicant.
H. 411	X			Signed by Governor: 3/19/08. Effective: 7/1/08.	
Proposed Regulation text: ID Prop Req 18.01.09 Temporary Rule: ID Ad Req Temporary 18.01.09	X			Comments by: 8/27/08 Effective: 7/1/08	The proposed amendments to the annuity suitability rule would remove the references to seniors, making it pertinent to all consumers.
Stat. § 41-1940	X			Enacted 2005. (HB 117)	From the NAIC Senior Protection Model, contains Section 6A-C "Duties of Insurers and Insurance Producers." Language deviates from the NAIC model in section addressing exempted contracts. Excludes Sect. 6D, system of supervision, and Sect. 6E, compliance with NASD conduct rules. Applies to consumers over 65.
Rule IDAPA 18.01.09	X			Adopted 2006.	Similar to the NAIC Senior Protection Model Req.
<b>ILLINOIS</b>					
Rule 3120.01+	X			Reg. Effective: 9/26/11 Annuity Training Course Requirement (Agents Licensed Prior to 7/1/12): 7/1/12 Annuity Training Course Requirement (Agents Licensed After 7/1/12): Immediate Product Specific Training Requirement: 9/26/11	The amendments bring the rule into conformance with changes to the NAIC model regulation. They include making the suitability standards more consistent with FINRA standards, requiring producer training on the provisions of annuities in general and more specifically on the products they are selling and modifying the definitions section.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Bulletin 2011-13	X			Dated: 10/31/11	Bulletin clarifies when amendments to Rule 3120 Suitability In Annuity Transactions become operative. The bulletin states that producers who hold a life insurance line of authority and intend sell annuities have until July 1, 2012, to complete the training requirements. The bulletin also states that insurer supervisory requirements contained in the regulation also become operative on July 1, 2012.
S. 1607			X	Signed by Governor: 8/23/11 Effective: 8/23/11	Adopts the NAIC Senior-Specific Certifications Model.
Rule 130.855			X	Effective: 9/8/09	The amendments to the securities rule add new provisions concerning the treatment by financial advisers of senior certifications and professional designations based on the NASAA Model.
Reg. 3120+	X			Comments by: 4/16/07. Adopted 2007 Effective: 01/01/08	Closely follows the NAIC Model Regulation for Suitability in Annuity Transactions.
<b>INDIANA</b>					
Prop. Rule 760 IAC 1-79			X	Hearing date: 5/7/12	The proposed new rule sets forth standards to safeguard consumers from deceptive and duplicitous marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale, or purchase of, or advice made concerning, a life insurance or annuity product. Would adopt a substantially similar version of the NAIC Model.
H. 1486	X			Signed by the Governor: 4/6/11 Annuity Training Provisions Effective: 1/1/12	Department of Insurance omnibus bill which among other things contains training provisions for those who sell annuities, modeled after the revised NAIC Suitability in Annuity Transactions Model Regulation.
Bulletin 184	X			Annuity Training Course Requirement (Agents Licensed Prior to 1/1/12): 7/1/12 Annuity Training Course Requirement (Agents Licensed After 1/1/12): Immediate	Provides clarification to HB 1015 and HB 1486 regarding the effective dates for the implementation of the training provisions and the requirement for variable licensing. The Bulletin also provides clarification for the insurer training provisions as well as an exemption to the variable licensing provisions for those producers who only sell, solicit or negotiate to pension, retirement, or profit-sharing plans. The ACLI worked closely with the Department on the details of the Bulletin, and in particular, sought further clarification



Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Rule 710 IAC 4-10-2			X	Product Specific Training Requirement: 1/1/12 Effective: 6/28/10	on a reasonable effective date as well as the exemption to the variable licensing law.  The new rule, based on the North American Securities Administrators Association model rule, prohibits the use of senior specific designations or certifications to imply special training or knowledge when advising senior citizens or retirees about investing, purchasing or selling securities.
Rule 760 IAC 1-72-1+	X			Effective: 3/27/09	The amended rule, which closely follows the NAIC model regulation, amends provisions on suitability in annuity transactions to include all consumers by deleting references specific to seniors and the definition of a "senior consumer."
IC 27-4-9	X*			Enacted 2005. (SB 634)	*Enabling legislation authorizing the Insurance Commissioner to adopt the Senior Protection Model.
Reg. 760 IAC 1-72	X			Adopted 2006	Similar to the NAIC Senior Protection Model.
S. 171	X*			Signed by the governor 5/3/07. Effective: 01/01/08.	*Enabling legislation for Dept. to promulgate the NAIC Suitability Model.
<b>IOWA</b>					
Bulletin 13-01		X		Date: 4/3/13	This bulletin provides guidance concerning provisions on annuity disclosure requirements including standards for annuity illustrations, the Buyer's Guide, and the content of disclosure documents. This bulletin supersedes prior memos and related e-mail.
Rule 191-15.61+		X		Effective: 4/11/12	Amendments bring the annuity disclosure rules of the unfair trade practices chapter into conformity with the NAIC model. The amendments include expanding the section on applicability and scope, adding new definitions and specifying requirements for providing the Buyer's Guide to mail solicitation and Internet applicants. The amended rule contains various compliance dates.
Rule 191-15.68+	X			Effective: 01/01/11 Product Specific Training Requirement: 1/1/11 Annuity Training Course Requirement: 5/1/11	The rules, which follow the NAIC model regulation, amend suitability requirements in the sale of annuities, including the purchase, exchange, and replacement of annuities and the establishment of procedures to ensure compliance with such requirements. Allows that a penalty for a violation may be reduced or eliminated if corrective action for the consumer is taken promptly after a violation is discovered or if the violation is not part of a pattern or

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Bulletin 10-02	X			Dated: 7/1/10	practice.  Bulletin provides notice that effective January 1, 2011, Rule 191-15.72 requires all producers selling or soliciting annuity products in Iowa to obtain four continuing education credits by an approved vendor. This one-time requirement is not a condition of license renewal. The Insurance Division's website lists approved courses and vendors.
Bulletin 10-05	X			Dated: 9/27/10	Provides compliance guidance for annuity suitability training requirements and addresses a grace period from compliance. It provides that compliance with the training requirement will not be enforced until May 1, 2011 provided the insurer can demonstrate it has made an effort to put the training in place by 1-1-2011.
Bulletin 11-4	X			Dated: 6/24/11	Clarifies the permitted and prohibited activities of persons holding an insurance license authorized to sell life insurance and annuities, but who are not licensed as investment advisors, securities agents, or investment advisor representatives under Iowa securities law.
Securities Bulletin 11-S-1	X			Dated: 6/24/11	The securities bulletin clarifies the permitted and prohibited activities of persons holding an insurance license authorized to sell life insurance and annuities, but who are not licensed as investment advisors, securities agents, or investment advisor representatives under Iowa securities law.
Bulletin 09-04	X				On March 26, 2009, the Division of Insurance issued Bulletin 09-04 addressing Life Insurance and Annuity Sales Practices, Replacements and Suitability. ACLI has received several questions concerning the reporting requirements. It appears the Division will rely on companies to implement their own monitoring system. Following is guidance we received from the Division.
Admin. Code §191-10.19(522B) & §191-15.8(3)			X	Adopted 2008 Effective: 1/1/09	Producers shall comply with rule 191-10.19(522B) in using senior-specific certifications and professional designations in the sale of life insurance and annuities.
Admin. Code §191-15.8					General suitability standards not based on NAIC Senior Protection Model. Reg. 191-15.68+ [507B] (below) amended § 191-15.8 to remove references to annuities.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
I.C.A. § 507B.4B	X*			Enacted 2006. (SB 2364)	Omnibus bill. Enabling legislation for Dept. to promulgate the NAIC Suitability Model. Would prohibit recommending the purchase, sale, or exchange of any life insurance policy or annuity, or any rider, endorsement, or amendment unless the person has reasonable grounds to believe that the recommendation is suitable. Applies to all ages.
Reg. 191-15.68+[507B]	X			Adopted 2006.	Close to the NAIC Suitability Model
Admin. Code §§ 191-15.61 to 191-15.67		X		Adopted 2003.	
<b>KANSAS</b>					
Reg. K.A.R. 40-2-14a  Policy and Procedure Regarding Suitability in Annuity Transactions	X			Reg. Effective: 6/1/13 Product Specific Training Requirement: 6/1/13 Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date): 12/1/13 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): Immediate	Amended regulation adopts by reference the November 29, 2012, version of the Kansas Insurance Department's "Policy and Procedure Regarding Suitability in Annuity Transactions." The amended regulation brings Kansas law into conformity with the revised NAIC Model.
Reg. K.A.R. 40-9-23			X	Effective: 1/14/11	Adopts the NAIC model regulation on the use of senior-specific certifications and professional designations in the sale of life insurance and annuities. Earlier this year Kansas had already issued a policies and procedures document which adopted the substance of the NAIC model. Regulation 40-9-23 merely codifies the NAIC model as law.
Reg. 40-2-14 a Reg. K.A.R. 81-3-6+	X		X	Adopted 2005. Effective: 5/22/09	Close to the NAIC Suitability Model.  The amendments to the Office of the Securities Commissioner's regulations make it disreputable for a broker-dealer, agent, investment adviser or investment adviser representative to use a professional designation or certification that generates a deceptive inference that the user has specialized instruction in counseling senior citizens. They set out the fraudulent and unprincipled procedures that comprise justification for discipline. The

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					amendments are based on the March 2008 North American Securities Administrators Association Model Rule on the Use of Senior-Specific Certifications and Professional Designation.
<b>KENTUCKY</b>					
Memo: Annuity Suitability Training	X			Dated: 12/14/11	Memo outlines the product specific continuing education and training requirements for any resident insurance producers who sell, solicit, or negotiate the sale of an annuity. The memo states that insurers who offer annuities shall get verification that producers receive training, maintain records under Kentucky's record retention requirement, and make the verification available to the Commissioner upon request.
Req. 806 KAR 9:020  ACLI Comments			X	Effective: 12/2/11	Amended regulation includes some of the provisions in the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations In The State of Life Insurance and Annuities (NAIC 278-1). Specifically, it adds a provision stating that a person shall not imply or purport to convey greater skill or knowledge advising seniors in the sale or solicitation of life insurance or annuity products (Section 2(3)). The regulation also includes new language regarding the "combination of words" and exemptions for certain job titles (similar to sections C and D of the NAIC Model). The regulation does not adopt the entire NAIC Model and the amendments are not word-for-word NAIC.
Reg. 806 KAR 12:120  ACLI Comments	X			Reg. Effective: 1/1/12	Amendments to the regulation on suitability in annuity transactions closely follows the NAIC model regulation and modifies sections on definitions, duties of licensees, licensee training, mitigation of responsibility, and recordkeeping. Modifications include outlining the duties of insurers and producers to consumers when recommending annuities; requiring insurers to provide product specific training materials; establishing procedures to detect recommendations that are not suitable; and require insurers to maintain records documenting compliance with training requirements and keep records of information collected from the consumer.
Reg. 806 KAR 9:220	X			Reg. Effective: 10/7/11 Annuity Training Course Requirement (Agents licensed as of 1/1/12): 7/1/12 Annuity Training Course Requirement (Agents licensed after 1/1/12):	Amends regulation to require insurance producers who sell, solicit or negotiate the sale of annuities to complete four hours of training in the classification and use of annuities, taxation, sales practices, and replacement and disclosure requirements.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
				Immediate	
Reg. 808 KAR 10:042			X	Effective: 2/6/09	Establishes standards and requirements for use of senior-specific certifications and designations in sale of securities.
Reg. 806 KAR 12:120	X			Adopted 2007 Effective 1/1/08	Similar to the NAIC Suitability Model.
Reg. 806 KAR 12:150		X		Adopted 2007 Effective 1/1/08	This new version was amended to incorporate comments received after hearings were held on June 26 with comments requested by July 6.
<b>LOUISIANA</b>					
H. 1177	X			Signed by the governor: 6/7/12 Effective: 8/1/12	Enacts the training requirements for those seeking to sell annuity products by adopting Section 7 "Insurance Producer Training" from the NAIC Annuity Suitability Model.
Reg. 89	X			Adopted 2006. Effective 1/1/07.	Similar to the NAIC Suitability Model. ACLI has confirmed with the DOI that the prop/ req. will be published in final form on 12/20/06 with an effective date of 1/1/07. No changes were made from the original version. Applies to all ages.
<b>MAINE</b>					
Ins. Reg. ch. 915		X		Adopted 2004.	
Rule 917	X			Adopted 2007. Effective 7/1/07.	NAIC Senior Protection Model with deviations regarding age. ACLI submitted comments on 2/3/06. Applied to consumers over 60. Re-proposed with a removal of the age limitations, the deletion of Section 6(C)(1)(c) and a change to a provision concerning compliance with NASD suitability rules for variable annuities, by stating that those rules have to be at least as protective of the consumer's interests as this one. ACLI submitted comments on 11/2/06 regarding 2 deviations from the model. At ACLI's request they modified the regulation to be consistent with changes recently approved by the NAIC.
<b>MARYLAND</b>					
Reg. 31.09.12.01 +	X			Reg. Effective: 11/1/11 Product Specific Training Requirement: 11/1/11 Annuity Training Course	The suitability in annuity transactions regulation, which generally follows the NAIC model regulation with minor deviations, adopt amendments to sections on duties of insurers and producers, definitions, supervision systems, producer prohibited acts, FINRA

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
				Requirement (Agents Licensed Prior to Reg. Effective Date): 5/1/12 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): Immediate	requirements, producer training, and compliance.
Bulletin 11-28	X			Dated: 9/13/11	Bulletin answers questions regarding the adoption of the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation and new requirements for insurance producers selling annuity products effective November 1, 2011.
Bulletin 11-10	X			Dated: 5/13/11	This bulletin notifies insurers of amendments to the suitability in annuity transactions regulation which generally follows the NAIC model with minor deviations. The amendments are effective November 1, 2011.
Reg. 31.03.15			X	Effective: 4/4/2011	Defines what constitutes misleading use of a senior retiree credential or designation by advisors and insurance producers in connection with life insurance, health insurance, or annuities. Adopts a substantially similar version of the NAIC Senior Designations Model.
S. 774			X	Signed by Governor: 5/20/10	Sets forth standards to protect consumers from dishonest, deceptive, misleading and fraudulent trade practices in the use of senior-specific certifications and professional designations in the marketing, solicitation, negotiation, sale, and purchase of, and advice given in connection with, life insurance, health insurance and annuities. Prohibits a person from using a senior-specific certification or professional designation in a way that would mislead a purchaser of life insurance, health insurance, or an annuity about specified matters. Requires the insurance commissioner, by regulation or order, to specify what constitutes a misleading use of senior-specific certifications or professional designations.
H. 882			X	Effective: 7/1/2010	
H. 571			X	Signed by Governor: 5/7/09 Effective: 5/7/09	As enacted, prohibits a person from using a senior or retiree credential or designation in a way that is misleading in connection with the offer, sale, or purchase of any security, or in advising another person as to the value, purchase, or sale of any security. Specifies the factors to be considered in determining whether a person is using a senior-specific certification or professional designation. (Same as HB571) [Note: "security" is defined to not include any insurance or endowment policy or annuity contract

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					under which an insurance company promises to pay money either in a lump sum, periodically for life, or some other specified period."]
S. 684			X	Signed by Governor: 5/7/09 Effective: 5/7/09	(Same as H. 571)
Admin. Code §§ 31.15.04.01 to 31.15.04.07				Adopted 1980.	Variation of the NAIC Annuity Disclosure Model.
Reg. 31.09.12.01+	X			Adopted 2007. Effective: 7/1/07.	Similar to the NAIC Suitability Model. ACLI submitted comments on 2/1/07. Sec. 6 of the adopted reg. has been amended slightly (from the proposed reg.) to reflect that compliance with the NASD Conduct Rules satisfies compliance with the regulation.
<b>MASSACHUSETTS</b>					
Opinion Letter					The Division of Insurance published an opinion letter dated August 5, 2009, on the "straight through processing" standards initiative being advocated by ACLI and the Insured Retirement Institute (formerly NAVA) that recognizes the ability to process the sale of annuities electronically in Massachusetts. August 6 State News Weekly
Reg. 211 CMR 96	X			Adopted 2006.	Similar to the NAIC Suitability Model. Also see DOI Bulletin 2006-08.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>MICHIGAN</b>					
S. 467	X			Law Effective: 6/1/13 Product Specific Training Requirement: 6/1/13 Annuity Training Course Requirement (Agents Licensed Prior to Act Effective Date): 12/1/13 Annuity Training Course Requirement (Agents Licensed After Act Effective Date): Immediate	ACLI and the Life Insurance Association of Michigan (LIAM) supported legislation which would adopt a substantially similar version of the NAIC Suitability In Annuity Transactions Model.
M.C.L.A. 500.4151+	X			Enacted 2006. (SB 880)	Similar to the NAIC Suitability Model.
<b>MINNESOTA</b>					
H. 791	X			Law Effective: 6/1/13 Product Specific Training Requirement: 6/1/13 Annuity Training Course Requirement (Agents Licensed Prior to Act Effective Date): 7/1/14 Annuity Training Course Requirement (Agents Licensed After January 1, 2014: Immediate	Enacts a similar version of the revised NAIC Model.  Compliance Guidance from Department of Commerce  * The Minnesota state trade received guidance directly from the Department of Commerce on their interpretation of effective dates for the various agent training requirements of the recently enacted annuity suitability legislation. With regard to the June 1, 2013 / January 1, 2014 agent training course gap, the department stated that training for agents licensed between these dates does not need to be completed until July 1, 2014.
H. 1853			X	Enacted 2009	Adopts the NAIC model on Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (Section 43).
Stat. § 72A.20				Enacted 1995.	Regulation of Trade Practices- Annuity Solicitation Standards.
Stat. § 60k.46				Enacted 2002.	Insurance Producers- Annuity Solicitation Standards.
<b>MISSISSIPPI</b>					
Rule 18.01+	X			Rule Effective: 4/10/13 Product Specific Training Requirement: 9/1/13	The Mississippi Insurance Department has promulgated Rule 18.01+ adopting the NAIC Suitability in Annuity Transactions model. The new rules establish a system to supervise annuity recommendations

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
				Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date): 4/10/14 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): 9/1/13	and set standards resulting in transactions that meet consumers' financial objectives. The rule has an effective date of April 10, 2013 and a date for compliance of September 1, 2013.
<b>MISSOURI</b>					
Rule 20 CSR 700-1.140			X	Effective: 1/1/09	The new section, which is consistent with the NAIC model regulation, establishes provisions on the permissible use of senior-specific certifications and professional designations. Includes prohibited uses of such certifications and designations and accepted accrediting entities.
Rule 20 CSR 700-1.146				Effective: 7/30/08	Amends the standards of professional conduct for insurance producers selling variable annuities and variable life insurance. Also includes new sections on standards of producer conduct for fixed and indexed annuities.
Rule 20 CSR 700-1.147				Effective: 7/30/08	This rule amends provisions on supervision in the sale of variable annuities and variable life insurance to replace references to the National Association of Securities Dealers (NASD) with the Financial Industry Regulatory Authority (FINRA).
Rule 20 CSR 700-1.148				Effective: 12/30/08	
Rule 20 CSR 400-5.410		X		Adopted 2007. Effective: 1/30/07	Similar to the NAIC Disclosure Model.
<b>MONTANA</b>					
Admin. R. 6.6.801- 6.6.806		X		Adopted 1998 and 1999.	
S. 535	X	X		Signed by the governor on 5/8/07. Effective 10/1/07.	Similar to the NAIC Disclosure and Suitability Models, however excludes variable annuities products.
<b>NEBRASKA</b>					
H. 887	X			Law Effective: 7/19/12 Product Specific Training Requirement: 7/19/12 Annuity Training Course	Omnibus bill which enacts a substantially similar version of the NAIC Suitability in Annuity Transactions Model Regulation.

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Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
				Requirement (Agents Licensed Prior to Act Effective Date): 1/19/13 Annuity Training Course Requirement (Agents Licensed After Act Effective Date): Immediate	
Bulletin CB-128	X			Dated: July 6, 2012	Bulletin responds to queries received by the Nebraska Department of Insurance regarding annuity training requirements for producers who hold a life insurance line of authority. Insurance producers who hold a life insurance line of authority and want to solicit the sale of annuity products are required to complete, within 6 months after July 19, 2012, a one-time, four-credit training course approved by the Department of Insurance.
Rev. St. § 44-8101 to 44-8107	X			Enacted 2006. (L. 875)	Similar to the NAIC Senior Protection Model.
L. 117	X			Signed by the governor on 5/30/07. Effective 3 calendar months after adjournment (7/17/08).	Extends the provisions of the Senior Protection in Annuity Transactions Act to all annuities and renames the act accordingly.
<b>NEVADA</b>					
Reg. Chapter 686A			X	Effective: 7/1/11	Adopts new provisions regulating the use of senior-specific certifications and professional designations, including prohibiting a producer from using senior-specific certifications or professional designations when the producer has not received any specialized training in the servicing of seniors from a qualified organization (Similar to NAIC Model).
Ch. 688A+	X	X		Adopted 2005. Re-proposed and adopted in 2006.	Variation of the NAIC Annuity Disclosure Model, NAIC Suitability Model, NAIC Life Insurance Disclosure Model and NAIC Life Insurance Illustration Model. Also see Bulletin No. 06-004.

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## ACLI Issue Status Chart

## NAIC Annuity Disclosure, Suitability &amp; Senior Designations

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>NEW HAMPSHIRE</b>					
Admin. Code Ins. 301.06(1)					Commissioner Sevilgny has published a Bulletin (07-47-AB) that outlines the Department's position on suitability standard to both life insurance and annuities.
Rule 305.01 +	X			Effective: 1/30/09	ACLI has commented to the Commissioner of Insurance on his recent suitability Bulletin 07-047-AB, expressing its deep concerns with the new compliance requirements for insurers set forth in the Bulletin.
Rule 311.01 +			X	Effective: 3/7/09	Closely following the NAIC model regulation (an exception is section 305.05(8)(e) on FINRA and requirements for recommendations of variable annuities), the new rule establishes for consumers provisions for advising them about annuity products to make certain that at the time of the transactions their insurance needs and financial goals are adequately met.
Admin. Code Ins. 306.02 to 306.9				Adopted 1983 and 2001.	The new rule on using senior specific certifications and professional designations is based on the NAIC model and establishes measures for using the designations in the solicitation, recommendation, sale or acquisition of life insurance and annuity products.
<b>NEW JERSEY</b>					
Rule 11:4-59A.1 +	X			Reg. Effective: 2/4/13 Product Specific Training Requirement: See Bulletin Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date): See Bulletin Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): See Bulletin	Variation of the NAIC Annuity Disclosure Model.
					The new rule tracks the NAIC Suitability in Annuity Transaction Model Regulation and the current law on suitability (N.J.S.A. 17B:25-34 and 17B:30-1 et seq.)
					While the new Rule is effective February 4, 2013, the DOBI has made clear in the adopted rule and in the Summary section that the requirements of the rule will not apply for six months following the effective date of the rule. Thus, the operation date for the rule is August 4, 2013. In amending §11:-59A.4(c) to reference the August 4, 2013 operation date, ACLI has noted that the language implies that new producers licensed on or after February 4, 2013, may not engage in the sale of annuities until the annuity training course requirements are met. ACLI has discussed this with the DOBI and per the DOBI, because the entire rule is not operational until August 4, 2013, the requirement for new producers is also delayed until August 4, 2013. Thus, per the DOBI, producers who are licensed after February 4, 2013 would be able to make an annuity sale. See bulletin for additional details.

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## ACLI Issue Status Chart

## NAIC Annuity Disclosure, Suitability &amp; Senior Designations

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Bulletin 13-01	X			Dated: 2/6/13	This Bulletin clarifies that by delaying the operative date of certain provisions on producer training and the sale of annuities until August 4, 2013, producers newly licensed to sell annuities on or after February 4, 2013 may sell the types of annuities to which the rules apply, but must complete the required training course by August 4, 2013 in order to continue to sell those annuities after that date. The Bulletin also provides information on approved annuity training courses.
Rule 11:4-60.1 +			X	Effective: 3/7/11	Establishes limitations on insurance producers, insurers and fraternal benefit society representatives regarding the use of certifications, professional designations, or forms of advertising expressing that the person or entity has special education, training or experience in advising or servicing senior citizens or retirees, in connection with the solicitation, negotiation or sale of life insurance.
Rule 11:4-59.1 +	X			Effective: 6/6/11	New rule establishes suitability standards and disclosure requirements for the sale, solicitation or negotiation of annuities directly to consumers. The rule includes requirements for the distribution of the Buyer's Guide and disclosure statement to consumers, and the filing of the disclosure statement with the Insurance Department. The rule includes requirements to establish a system of supervision for producers selling annuities including producer training, record retention, and analysis of annuity transaction data.
S. 1745			X	Effective: 7/6/10	Adopts a substantially similar version of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations and applies its prohibitions to the offer, sale or purchase of a security.
Rev. Stat. § 17B:25-20				Enacted 1981 and 2005.	Limits maturity dates & surrender charges for annuities sold to seniors.
S. 1165	X	X		Effective: 4/1/09	Provides new standards and procedures regarding annuity products solicited directly to consumers, including the prevention of fraudulent and misleading marketing of annuity products by insurers, brokers and agents; the disclosure of information regarding annuity products; and the suitability of annuity products issued to consumers. The new standards and procedures are now more closely modeled after the NAIC Model Regulations on Suitability in Annuity Transactions and Annuity Disclosure. However, there are two significant differences from the NAIC Models: (1) the disclosure form to be used by an insurer will be designed by the Insurance Commissioner; and (2) oversight of third-party suitability procedures must include periodic reviews of information by the

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Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Clarification of S 1165					insurer as set forth by the Insurance Commissioner.  In response to ACLI questions, the Department of Banking and Insurance (DOBI) has provided ACLI with additional clarification regarding the implementation of S 1165, legislation concerning annuity disclosures. While the DOBI has provided guidance via Bulletin No. 09-06 and 09-12, ACLI had additional questions. Please find a copy of ACLI's questions and the DOBI's response on certain annuity disclosure matters relating to exemptions, the free look period, suitability form, and disclosure form. The DOBI is still working on the rules to implement S 1165. ACLI will update members as new information is received. August 10 ACLI Digest
Bulletin No. 09-12	X			The NJ Dept. of Banking and Insurance (DOBI) issued Bulletin No. 09-12 (PDF) on 4/20/09	Bulletin is regarding individual fixed deferred and immediate annuity form filing and suitability notice requirements. The purpose of the Bulletin is to further clarify Bulletin No. 09-06, which remains in effect. Because Bulletin No. 09-06 remains in effect, the use of the Template for a Fixed Annuity Disclosure—which is based on ACLI's templates for disclosure—will continue to satisfy the fixed annuity disclosure requirements. Per the Bulletin, while the DOBI encourages immediate action to carry out the legislative intent of S1165, until the rules are adopted and the buyer's guides and annuity contract disclosure statements have been approved by the DOBI, it will not be possible for insurers to distribute these documents to consumers. However, the Bulletin further provides that all filings submitted on or after April 1, 2009 must be accompanied by or include a Buyer's Guide and Disclosure Statement that contain the required elements specified in Bulletin No. 09-06. ACLI will be contacting the DOBI to clarify exactly what insurers are required to file as of April 1, 2009.
Bulletin No. 09-06	X				The New Jersey Department of Banking and Insurance issued Bulletin No. 09-06 on March 10, 2009. This Bulletin contains disclosure and suitability form requirements for individual fixed deferred and immediate annuities sold in New Jersey.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
S. 1165	X	X		Signed by Gov.: 9/19/08 Effective: 4/1/09	Substitute bill differs significantly from the original S. 1165 in that it DOES NOT contain a private right of action and the new standards and procedures are now more closely modeled after the NAIC Model Regulations on Suitability in Annuity Transactions and Annuity Disclosure. However, there are two significant differences from the NAIC Models: (1) the disclosure form and suitability form to be used by an insurer will be designed by the Insurance Commissioner; and (2) oversight of third-party suitability procedures must include periodic reviews of information by the insurer as set forth by the Insurance Commissioner.  Update: The department will be issuing a bulletin (instead of the regulation) regarding the forms before April 1.
<b>NEW MEXICO</b>					
12 N.M. Admin. Code § 11.17.1+			X (NASAA)	Effective: 1/1/10	Establishes standards and requirements for use of senior-specific certifications and designations in sale of securities. (Based on NASAA Model)
13 N.M. Admin. Code §§ 9.12.1 to 9.12.13		X		Adopted 1997 and 2000.	
<b>NEW YORK</b>					
Prop. Reg. 187	X			Comments: 4/18/13	Proposed new regulation would establish requirements for insurers and producers to determine a consumers' suitability prior to recommending or selling an annuity. The proposed regulation is substantially similar to the NAIC Suitability in Annuity Transactions Model Regulation.
A. 634				Introduced: 1/9/13	Would place restrictions on the sale of annuities to seniors and provide for suitability requirements and the establishment of a system to supervise recommendations. Would, among other provisions, require annual 3 hours training on suitability in annuity and life insurance transactions and would prohibit the false use of insurance designations.
Reg. 199			X	Effective: 2/20/13	New rule establish standards and requirements for the use of senior-specific certifications and designations in the sale of life insurance and annuities. Also, specifies prohibited uses of senior-specific certifications and professional designations. Follows the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Emergency Reg. 199			X	Effective: 2/1/13 Expires: 4/2/13	Emergency regulation establishes standards and requirements for the use of senior-specific certifications and designations in the sale of life insurance and annuities. Specifies prohibited uses of senior-specific certifications and professional designations. Emergency regulation expires April 2, 2013.
Emergency Reg. 187	X			Effective: 5/31/13 Expires: 7/29/13	Emergency regulation establishes requirements for insurers and producers to determine a consumers' suitability prior to recommending or selling an annuity. This emergency regulation is substantially similar to the NAIC Suitability in Annuity Transactions Model Regulation. Emergency regulation expires July 29, 2013.
Admin. Code tit. 11 §§ 40.0 to 40.6 (Req. 139) (1990) §§ 53-1.1 to 53-1.6 (Req. 74)				Adopted 1990, 1997 and 2003.	Variation of the NAIC Annuity Disclosure Model addressing group annuity contracts and funding agreements.
<b>NORTH CAROLINA</b>					
Rule 11 NCAC 12.0461			X	Effective: 2/1/10	Incorporates by reference the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations, which establishes standards and requirements for the use of senior-specific certifications and professional designations in the sale of life insurance and annuities.
Admin. Code tit. 11 ch. 12 § .0420				Adopted 1976 and 1992.	Requires submission of suitability form.
Gen. Statutes §58-60+		X		Enacted 2005. (HB 655)	Omnibus bill including NAIC Annuity Disclosure model language.
H. 731	X			Signed by the Governor 7/28/07. Effective 1/1/08.	Among other things, enacts the "Suitability in Annuity Transactions Act" and is similar to the NAIC Suitability in Annuity Transactions Model Regulation. Deviations from the NAIC Model include sections relating to a requirement for an application for annuities and surrender fees on death benefits. Amends Article 58 of Chapter 58 of the Statutes relating to the portability of group life insurance. Defines "portability" to mean "the prerogative to continue existing group life insurance coverage, or access alternate group life insurance coverage, that may be provided by a group life insurance policy to an individual insured after the individual's affiliation with the initial group terminates." Provides for the applicability of certificates and prohibitions for portability of group life insurance. Section 7.6, also strikes by reference law that required groups must contain 10 or more lives to qualify for a group life insurance product. The Suitability in Annuity Transactions Act becomes

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					effective January 1, 2008 and applies to violations occurring on or after that date.
<b>NORTH DAKOTA</b>					
H. 1160	X			Law Effective: 8/1/11 Product Specific Training Requirement: 8/1/11 Annuity Training Course Requirement (Agents Licensed Prior to Act Effective Date): 8/1/12 Annuity Training Course Requirement (Agents Licensed After Act Effective Date): Immediate	Updates North Dakota's annuity suitability statute to conform with the March 2010 version of the NAIC Suitability in Annuity Transactions Model Regulation.
S. 2155	X			Signed by the Governor 4/12/07. Effective: 8/1/07.	Similar to the NAIC Suitability Model. There is a deviation in the Mitigation of Responsibility section. It appears to be a drafting error and is expected to be corrected before the hearing. Passed Senate unanimously with an amendment correcting the deviation in the section mentioned above.
Admin. Code § 45-02-02-14				Adopted 1984 and 2001.	Rules cover recommendations to consumers over 65.
<b>OHIO</b>					
Rule 3901-6-13	X			Reg. Effective: 7/1/11 Product Specific Training Requirement: 7/1/11 Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date): 1/1/12 Annuity Training Course Requirement (Agents License After Reg. Effective Date): Immediate	Rescinds and re-adopts the suitability in annuity transactions rule to incorporate the most recent amendments to the NAIC model regulation, which it substantially follows. The new rule requires insurers, including fraternal benefit societies, to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers, at the time of the transaction, are appropriately addressed.
Bulletin 2011-07	X			Dated: 5/10/11	The bulletin provides a reminder that as of July 1, 2011, the suitability of annuity sales rule imposes a new one-time annuity-specific continuing education requirement on insurance agents who

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					engage in the sale, solicitation or negotiation of annuity products. This one-time requirement is in addition to the company provided product specific training.
Rule 3901-5-11			X	Effective: 7/1/09	Creates procedures and prerequisites in the application of senior-specific certifications and designations by insurance agents in the counseling, sale, solicitation or negotiation of life or health insurance policies or annuity products.
Reg. 3901-6-14		X		Adopted: 2007. Effective: 3/1/07.	Similar to the NAIC Annuity Disclosure Model.
<b>OKLAHOMA</b>					
Annuity Training Notice	X			Dated: 1/11/12	Notice states that the 4 hour annuity training requirement for producers selling annuities is now applicable to resident and nonresident producers. The Insurance Department will allow a 90 day grace period for nonresident producers to comply. Those producers who have satisfied an annuity training requirement in another state with substantially similar provisions as the Oklahoma rule will be deemed to satisfy the Oklahoma requirement, according to the notice.
Rule Chapter 25	X			Effective: 7/14/10	Per ACLI's request, Oklahoma has adopted the NAIC annuity training rules (Section 7 of the NAIC Suitability in Annuity Transactions Model Revisions).
Rule 365:25+			X	Effective: 7/14/09	The rule amends provisions on standards for determining if an insurance company is in a hazardous financial condition, requirements for prepaid funeral benefits, conversion from trust to insurance funded contracts, commissioner's authority, and viatical settlement licensing and reporting requirements. Adds a new regulation on the use of senior-specific certifications and professional designations in the sale of life insurance and annuities and new sections on viatical settlement standards for evaluation of reasonable payments for terminally ill insureds, advertising filing requirements, prohibited practices, insurance company practices, and the transition period for existing licenses. Also revokes Subchapter 13 on the regulation of life settlements and adds new appendices for a required brochure and forms for viatical settlements.
Rule 365:25-17	X			Adopted 2006.	Similar to the NAIC Suitability Model.
Rule 365:25-19-1		X		Adopted 2006.	Similar to the NAIC Annuity Disclosure Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>OREGON</b>					
Rule 836-080-0170+	X			Reg. Effective: 7/1/11 Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date) and Product Specific Training Course: 1/1/12 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): Immediate	Adopts the annuity suitability rule which requires insurers to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products, and ensures that producers who sell annuities receive proper training. The regulation largely follows the revised NAIC model regulation including a delayed effective date until July 1, 2011, with the training requirement becoming effective on the later of August 1 or 6 months after the training is available.
Rule 836-080-0160			X	Effective: 11/1/09	The proposed new rule would Establishes criteria to safeguard consumers from deceptive and dishonest marketing practices. It provides protection relating to the use of distinctive descriptions and certifications in the solicitation, transaction or acquisition of, or counsel made, concerning an insurance product or in offering advice as to the value of or the suitability of purchasing insurance. The adopted rule goes beyond the NAIC model and applies to all designations, not just those used in the senior market.
OAR 836-080-0090				Adopted 2004.	General suitability standards not based on NAIC Senior Protection Model.
OAR 836-051-0900		X		Effective: 8/15/08	The Insurance Division has started a rulemaking process to adopt the Annuity Disclosure Model by rule. A rulemaking advisory committee meeting will be held 5/5.
<b>PENNSYLVANIA</b>					
S. 237	X			Signed by the Governor: 3/22/10  Effective: 9/18/10	As enacted, deviates from the NAIC model by the added language in Section 403-B(e) Compliance with other rules, "registered under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or rules and regulations adopted under the Securities Act of 1933." This language appears to exclude private placements, which are variable annuities, but not registered with the SEC. ACLI is seeking a fix to amend the language during the next legislative session.
Admin. Code tit. 31 §§ 85.38 to 85.39				Adopted 1978.	Variation of the NAIC Annuity Disclosure Model addressing variable annuity and variable accumulation annuity contracts.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
<b>RHODE ISLAND</b>					
Reg. Securities 501-1			X	Effective: 1/13/11	Regulation establishes standards and requirements for the use of senior specific certifications and designations in the offer, sale, or purchase of securities. The regulation is substantially similar to the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designation with the exception of certain stylistic drafting changes.
Reg. 12	X			Reg. Effective: 1/20/11 Product Specific Training Requirement: 6/1/11 Annuity Training Course Requirement (Agents Licensed Prior to 6/1/11): 12/1/11 Annuity Training Course Requirement (Agents Licensed After 6/1/11): Immediate	Amends the annuity suitability regulation to follow the NAIC model regulation, with the exception of certain provisions on standards for determination of suitability. Also includes changes to sections on definitions, duties of insurers and producers, and adds a new section on producer training.
Bulletin 2011-02	X			Dated: 4/22/11 Effective: 6/1/11	Details producer training requirements for annuity suitability prior to the sale, solicitation, or negotiation of policies or contracts, effective June 1, 2011. Includes details on course approval, hours of training required, evidence of compliance with training requirements, and record retention.
Reg. 41		X		Effective: 9/30/09	The new regulation stipulates the minimum information that is required to be disclosed and the manner for disclosing it relating to the sale of annuity contracts. It makes certain that consumers comprehend specific essential attributes of annuity contracts and is based on the NAIC model.
Reg. 112			X	Effective: 5/26/09	Based on the NAIC model, the new regulation on senior specifications was adopted to offer continuity with other states. It establishes criteria to protect consumers from deceptive marketing practices concerning the use of senior-specific certifications and professional designations in the purchase, solicitation, sale or advice made in connection with life insurance or annuity products.
<b>SOUTH CAROLINA</b>					
Reg. 69-29	X			Reg. Effective: 9/25/11	New regulation establishes requirements for insurers and producers to determine a consumers' suitability prior to the purchase,

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
				Product Specific Training Requirement: 9/25/11 Annuity Training Course Requirement (Agents Licensed Prior to Reg. Effective Date): 3/25/12 Annuity Training Course Requirement (Agents Licensed After Reg. Effective Date): Immediate	exchange, or replacement of an annuity. Also includes requirements for record retention and producer training. Does not substantially deviate from the revised NAIC Model and contains both the 6 month delayed effective date and the pattern or practice language.
Ins. Reg. 69-39				Adopted 1986.	Older version of the NAIC Annuity Disclosure Model.
Reg. 69-40.1			X	Effective: 5/28/10	Based on the NAIC model regulation, establishes standards and requirements for the use of senior-specific certifications and designations in the sale of life insurance and annuities.
<b>SOUTH DAKOTA</b>					
S. 32	X			Signed by Governor: 2/23/12 Law Effective: 7/1/12 Product Specific Training Requirement: 7/1/12 Annuity Training Course Requirement (Agents Licensed Prior to Act Effective Date): 1/1/13 Annuity Training Course Requirement (Agents Licensed After Act Effective Date): Immediate	Enacts a similar version of the revised NAIC Suitability in Annuity Transactions Model.
Rule 20:08:03			X* (NASAA)	Effective: 12/9/10	Adds new rule to prohibit the use of senior specific designations or certifications to imply special training or knowledge when advising senior citizens or retirees about investing, purchasing or selling securities (adopts NASAA Model). Also replaces the name "National Association of Securities Dealers" with "Financial Industry Regulatory Authority, Inc."
S. 37	X			Signed by governor 3/11/08; Effective 7/1/08.	Establishes suitability requirements for annuities. This law is a legislative enactment of the NAIC Model Annuity Suitability

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					Regulation.
<b>TENNESSEE</b>					
Bulletin	X			Date: 5/22/13	On May 22, 2013, a Bulletin was issued addressing questions arising from Reg. sec. 0780-1-86 suitability in annuity transactions. The department's insurance and securities divisions jointly authored the bulletin to provide guidance to insurance producers, investment advisers, investment adviser representatives and broker-dealer agents about the permissible and prohibited activities of Insurance-Only and Securities-Only persons. The bulletin follows Iowa Insurance Bulletin 11-4, a bulletin that had the approval of industry.
TN Ad Reg 0780-01-86+	X			Effective: 7/6/08	Similar to the NAIC Suitability Model.
<b>TEXAS</b>					
H. 2277  ACLI Comments  Department of Insurance Resource  Department of Insurance Clarification	X			Signed by the Governor: 6/17/11 Act Effective: 9/1/11 Annuity Training Course and Product Specific Training Requirement (Agents Licensed Prior to Act Effective Date): 3/1/12 Annuity Training Course and Product Specific Training Requirement (Agents Licensed After Act Effective Date): Immediate	Amends the current suitability law to provide for the revisions to the NAIC Suitability in Annuity Transactions Model Act. The revised suitability requirements apply to any recommendation to purchase, exchange or replace an annuity that is made on June 1, 2012 and after.  * Producer Training Requirement Clarification
Rule 28 TAC 3.9701+		X		Effective: 3/1/11	Adopts annuity disclosure rules that require insurers provide specific disclosures to both annuity applicants and annuity contract owners. The annuity disclosure rule deviates from the NAIC model regulation and follows the substance of H. 1293, which passed during the 2009 legislative session but was vetoed by Governor Perry because the bill contained a private right of action. The rules are applicable to annuity transactions that occur on or after the date that is six months after the effective date of the rule. [Ed. Note: Please see the 2/15/11 State News Flash for additional information.]
H. 1294			X	Signed by the governor 6/19/09	As enacted, relates to the use of senior-specific certifications and professional designations in the sale of life insurance and annuities.

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Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					Follows the NAIC Senior Designations and Professional Certifications Model Regulation. Also includes agent education requirements in the sale of annuity products and applicable only to resident agents. Provides an April 1, 2010 compliance date for the agent continuing education requirements. Effective date is September 1, and applies only to the solicitation of, sale of, or advice made in connection with, a life insurance or annuity product by an insurance agent on or after January 1, 2010.
H. 4492	X			Signed by Gov: 6/19/09 Effective: 9/1/09. Chapter No. 1093	As enacted, amends the suitability law to address annuities registered under the Securities Act of 1933 and update reference from NASD to FINRA.
H. 2761	X			Signed by the governor on 6/15/07. Effective 9/1/07.	Substantively adopts the NAIC Suitability of Annuity Transactions Model Regulation.
<b>UTAH</b>					
Rule R590-230-1+	X			Rule Effective: 3/26/12	The amendments bring the rules into line with the 2010 NAIC Suitability in Annuity Transactions Model Regulation. They include, but are not limited to, adding to the definition section by incorporating the necessary information that should be taken into consideration when determining the suitability of a recommendation; revising the section on the duties of insurers and producers; and adding a section on producer training. The adopted rule does not include the specific producer training requirements contained in the NAIC Model, but they may be adopted at a later date.
R590-252			X	Effective: 2/25/09	The new rule institutes criteria for using senior-specific certifications and professional designations by insurance producers and consultants, broker-dealers and investment advisors in the sale of life insurance, annuities, and accident and health products.
R590-230	X			Adopted 2006.	Similar to the NAIC Suitability Model.
R590-229-1		X		Adopted 2004.	
<b>VERMONT</b>					
Reg. SI-11-03			X	Effective: 9/1/11	Adopted rule prohibits the use of senior specific-certifications and designations to imply special training or knowledge in the offer, sale, or purchase of securities or insurance, or in providing investment advice regarding securities or insurance. Adopts a similar version of the NAIC Model Regulation on the Use of Senior-

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Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
					Specific Certifications and Professional Designations.
H. 222			X*	Signed by Governor 6/1/09. This act shall take effect on July 1, 2009, except that Secs. 1, 2, and 5 of this act shall take effect January 1, 2010.	Creates new law authorizing the Commissioner of Business, Insurance, Securities and Health Care Administration (BISHCA) to extensively regulate life settlements, while specifically prohibiting stranger-originated life insurance (STOLI) transactions. Authorizes BISHCA to adopt rules that would govern credentials, certifications, and designations of those holding themselves out as possessing special levels of expertise regarding senior investments.
<b>VIRGINIA</b>					
Reg 14 VAC 5-43-10+			X	Effective: 5/15/09	The new regulation, which closely follows the NAIC model regulation, establishes standards and requirements for the use of senior-specific certifications and designations by insurance agents in the marketing, sale, or purchase of a life or accident and health insurance policy, or annuity products. Applicability includes the marketing, sale, or purchase of disability income insurance policies, long-term care insurance policies, long-term care partnership policies, and fixed and variable annuities.
14 VAC 5-30-10+				Adopted: 2006. Effective: 4/1/07	Life Insurance and Annuity Replacements
Rule Ch. 45	X			Adopted: 2006. Effective: 4/1/07.	Closely follows the NAIC Suitability Model with the exception of the Mitigation of Responsibility section.
<b>WASHINGTON</b>					
Rule 284-17-265 and Rule 284-23-390  ACLI Comments	X			Rule Effective: 3/29/12 Product Specific Training Requirement: 3/29/12 Annuity Training Course Requirement (Agents Licensed Prior to Rule Effective Date): 9/29/12 Annuity Training Course Requirement (Agents Licensed After Rule Effective Date): Immediate	New regulations, among other things, clarify the requirements regarding disclosure and suitability of sales of annuities to the consumer based on the 2010 NAIC Suitability in Annuity Transactions Model Regulation; and outline the annuity suitability certification and training requirements and duties of insurers and insurance producers. ACLI received confirmation from the OIC staff that elements of the current statute, such as the FINRA Safe Harbor provision and the exemptions to the suitability requirements, are still operative even though they are not restated in the proposed rule.
Rule 284-17-605  ACLI Comments			X	Effective: 3/16/12	New rule establishes standards and requirements for the use of senior-specific certifications and designations in the sale of life insurance and annuities, similar to the NAIC Model.

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Admin. Code R. §§ 284-23-300 to 284-23-380				Adopted 1980.	Older version of the NAIC Annuity Disclosure Model.
S. 5671	X			Signed by governor 3/30/09. Chapter 18. Effective 7/26/09	Requires that annuities sold in the state be appropriate for the age and financial situation of the owner. Sets forth various requirements for insurers and producers concerning the sale of annuities. Requires the Commissioner to adopt by rule, annuity suitability standards, upon reviewing standards previously established by the NAIC and other states. Includes the Mitigation of Responsibility section of the NAIC model and updates the FINRA safe harbor language to refer to "registered" annuities. Requires the Commissioner to notify the Legislature if a change is made in the types of annuities subject to registration under the Securities Act of 1933. (Same as H. 1563)
<b>WEST VIRGINIA</b>					
Rule 114-11B	X			Req. Effective: 7/1/11 Product Specific Training Requirement: 7/1/11 Annuity Training Course Requirement (Agents Licensed Prior to Req. Effective Date): 12/31/11 Annuity Training Course Requirement (Agents License After Req. Effective Date): Immediate	The amendments to the suitability in annuity transactions rule outline replacement requirements, add producer training and continuing education provisions, and amend definitions and provisions on duties of insurance producers. Tracks the revised NAIC Suitability in Annuity Transactions Model Regulation, with only a few deviations.
Rule 114-89			X	Effective: 7/1/10	Establishes standards and requirements for the use of senior-specific certifications and professional designations in the sale of life insurance and annuities. (NAIC Senior Designations Model)
Rule 114-11E		X		Effective: 7/16/10	Establishes requirements for the disclosure of information in relation to the sale of annuity contracts. Includes requirements for the content of the disclosure document and the Buyer's Guide. (NAIC Annuity Disclosure Model)
S. 407		X	X	Signed by Governor: 4/2/10  Effective: 3/13/10	This bill adopts various regulations, including Annuity Disclosure (Prop. Rule 114-11E) and Use of Senior Designation (Prop. Rule 114-89). While the legislation itself is effective, ACLI is working with the Insurance Department on effective dates for the Rules.



Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Code of State Rules § 114-11-6(q)				Adopted 1974.	General suitability standard not based on the NAIC Suitability Model.
<b>WISCONSIN</b>					
S. 572	X			Signed by Governor: 5/13/10 Law Effective: 5/1/11 Product Specific Training Requirement: 5/1/11 Annuity Training Course Requirement (Agents Licensed Prior to Act Effective Date): 11/1/11 Annuity Training Course Requirement (Agents Licensed After Act Effective Date): Immediate	Adopts a substantially similar version of the revised NAIC Model Law on Annuity Suitability with a few deviations that provide for greater rule-making authority by the Commissioner; provide penalties; and allow the Commissioner to review and take action against any violations.
Rule Ins. 6.90			X	Effective: 1/1/10	The new rule creates criteria to shield consumers from deceitful practices with respect to the use of senior-specific certifications and professional designations in the advertising, solicitation, sale or purchase of life insurance, annuity products or health insurance. It follows closely the NAIC model with two discrepancies. The new rule adds advertising to the list of practices and conduct, and health insurance to the list of products to which the rule applies.
S. 294	X			Signed by governor 3/26/08. Effective 3/28/08 except for following sections: Insurance Form Filing is effective 7/1/08 and Suitability of Annuities is effective 10/1/08.	Enacts the NAIC Interstate Insurance Product Regulation Compact with slight deviations. Amends the suitability of annuity sales statutes to make them apply to consumers of all ages, not just to a person 65 or older. This makes the statute consistent with the NAIC Suitability in Annuity Transactions Model Regulation. Provides that, with a number of specified exceptions, a form first used on or after the effective date of the provision that has not already been filed by that date may be used without approval by the commissioner. The specified exceptions, which must still be filed and approved before use, include, among others, forms for long-term care insurance. The Committee met on 4/22 and heard presentations from Jim Mumford of the Iowa Department, IMSA, and FINRA regarding their activities on suitability. The Committee has recently been given the task of developing baseline supervision standards for the NAIC Suitability of Annuity Sales Working Group.
Stat. § 628.347	X			Enacted 2004.	Applies to consumers over 65. (SB 320)

Legislative or Regulatory Citation	Suitability Model	Annuity Disclosure Model	Senior Designation	Status	Comments
Admin. Code § INS. 2.15				Adopted 1982 & 1989.	Variation of NAIC Annuity Disclosure Model.
<b>WYOMING</b>					
Prop. Rule ADC Ins Gen Ch 64 §1+	X			Comments: 8/11/13 Hearing: No date given	Would require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving life insurance and annuity products. Would also provide for producer training requirements. Based on the revised NAIC Model.
Rule 62			X	Effective: 4/23/10	The new rule, which deviates from the NAIC model regulation, establishes standards and requirements for the use of senior-specific certifications and designations in the sale of annuities, accident and health insurance, and life insurance. Specifies prohibited uses of such certifications and designations.
Ins. Reg. Ch. 27 § 11				Adopted 1968 & 1997.	Variable contract regulation on suitability of sales.

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## **FINRA Rule 2330: Suitability and Supervision in the Sale of Variable Annuity Contracts**

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### **I. Overview and Scope**

A. FINRA [Rule 2330](#) [Formerly NASD Rule 2821], which governs suitability and supervision in the sale of variable annuity contracts, was approved by the SEC in 2008, and was under development since 2004. The rule evolved through six different stages, five at the SEC, and one at FINRA.

B. This outline will summarize the elements of Rule 2330, and discuss its administrative history to illuminate FINRA's purpose and intent.

### **II. Substantive Overview: Rule 2330 has four primary provisions**

A. Requirements governing recommendations, including a suitability obligation, specifically tailored to deferred variable annuity transactions;

B. Principal review and approval obligations;

C. A specific requirement for broker-dealers to establish and maintain written supervisory procedures reasonably designed to achieve compliance with the rule's standards; and,

D. A targeted training requirement for broker-dealers' associated persons, including registered principals.

### **III. The Rule's Requirements in Greater Detail**

A. Revised Rule 2330 established the following specific requirements:

1. *Recommendation Requirements.* When recommending a deferred variable annuity transaction, Rule 2330 requires broker-dealers and salespersons to have a reasonable basis to believe that the: customer *has been informed of, in a general fashion,* the various features of the deferred variable annuity,

- a) customer *would benefit from* certain features of a deferred variable annuity (e.g., tax-deferred growth, annuitization or a death benefit); and
- b) the deferred variable annuity *as a whole* and the underlying sub-accounts or riders are suitable for the particular customer.
- c) the particular deferred variable annuity that the registered representative is recommending, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and the riders and similar product enhancements are suitable (and in the case of an exchange, the transaction as a whole also is suitable) for the customer based on the information the registered representative is required to make a reasonable effort to obtain.

2. Revised Rule 2330 requires these determinations to be *documented and signed* by the salesperson recommending the transaction.

- a) Rule 2330 would also require salespersons to make *reasonable efforts* to obtain information concerning customers' age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the variable annuity, investment time horizon, existing investment and insurance holdings, liquidity needs, liquid net worth, risk tolerance, tax status and other information used by the salesperson in making recommendations.

3. *Supervisory Review.* Rule 2330(c) requires that a principal review each variable annuity purchase or exchange within seven business days after the signed application arrives at the broker-dealer's office of supervisory jurisdiction in good order. A registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity.

- a) In reviewing the transaction, the registered principal would need to take into account the extent to which:
  - the customer would benefit from certain features of a deferred variable annuity;
  - the customer's age or liquidity needs make the investment inappropriate; and,
  - the customer involved an exchange of a deferred variable annuity: will incur surrender charges, face a new surrender period, lose death or existing benefits,
  - have increased mortality and expense fees, appears to have a need for any potential product enhancements and

improvements, or had another deferred variable annuity exchange within the preceding 36 months.

- Under Rule 2330, the supervisory review standards must be signed and documented by the registered principal that reviewed and approved the transaction.

4. *Supervisory Procedures.* Rule 2330 requires broker-dealers to establish and maintain specific written supervisory procedures reasonably designed to achieve and evidence compliance with the standards in Rule 2330. The broker-dealer must have procedures to screen and have principal review of the recommendations requirements in Rule 2330, and determine whether the salesperson has a particularly high rate of effecting deferred variable annuity exchanges.

5. *Training.* Under the proposal, broker-dealers would need to develop and document specific training policies or programs designed to ensure that salespersons recommending transactions, and registered principals who review transactions, in deferred variable annuities comply with the requirements of Rule 2330 and that they understand the material features of deferred variable annuities, including liquidity issues, sales charges, fees, tax treatment, and market risks.

6. *Automated Supervisory Review.* FINRA's submission on the rule indicated that the rule would not preclude firms from using automated supervisory systems, or a mix of automated and manual supervisory systems, to facilitate compliance with the rule.

a) In addition, FINRA delineated what, at a minimum, a principal would need to do if his or her firm intends to rely on automated supervisory systems to comply with the proposed rule.

b) Specifically, a principal would need to (1) approve the criteria that the automated supervisory system uses, (2) audit and update the system as necessary to ensure compliance with the proposed rule, (3) review exception reports that the system creates, and (4) remain responsible for each transaction's compliance with the proposed rule.

c) Finally, FINRA noted that a principal would be responsible for any deficiency in the system's criteria that would result in the system not being reasonably designed to comply with the rule.

7. *Tax Qualified Plans.* Rule 2330 does not apply to variable annuity transactions made in connection with tax-qualified, employer-sponsored retirement or benefit plans that either are defined as a "qualified plan" under Section 3(a)(12)(C) of the Exchange Act or meet the requirements of Internal Revenue Code Sections 403(b) or 457(b), unless, in the case of any plan, the broker-dealer makes recommendations to individual plan participants regarding the variable annuity.

#### IV. Review and Explanation of Rule 2330

##### A. Supervisory review standards changed

1. FINRA enlarged the time period for supervisory review to seven days after the signed application arrives at the broker-dealer's OSJ in good order.

a) Compare to *prior* draft: "Prior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but *no later than seven business days after the customer signs the application*, a registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity."

b) Compare to earlier draft: the third amendment required the principal must review and approve the transaction "[n]o later than *two business days following* the date when a member or person associated with a member *transmits a customer's application* for a deferred variable annuity to the issuing insurance company for processing or *five business days from the transmittal date* if additional contact with the customer or person associated with the member is necessary in the course of the review."

2. FINRA rationale: ensuring that all broker-dealers have adequate time to perform a thorough principal review of these transactions.

a) In view of the variety of features and provisions in connection with the issuance of deferred variable annuity contracts, FINRA became persuaded that principal review of variable annuity sales requires greater time than reviews of many other securities transactions.

b) The provision of a reasonable amount of time for pre-transmittal review, however, posed potential problems related to other rules concerning the prompt handling of customer funds.

(1) For instance, FINRA Rule 2330 states generally that member firms shall not make improper use of customer funds, and FINRA Rule 2820 specifically requires member firms to "transmit promptly" the application and the purchase payment for a variable contract to the issuing insurance company.

(2) Similarly, Rules 15c3-1 and 15c3-3 under the 1934 Act require certain member firms to promptly transmit and forward funds.

(3) Rules 15c3-1(c)(9) and (10) under the 1934 Act define the terms "promptly transmit and deliver" and "promptly

forward” funds as meaning “no later than noon of the next business day after receipt of such funds.”

3. FINRA solution to regulatory conflicts with prompt pricing standards:
  - a) FINRA asked for, and obtained from the SEC, regulatory relief regarding Rules 15c3-1 and 15c3-3 when the same circumstances exist. As a companion to the rule approval, the SEC provided an exemptive order from the prompt pricing provisions.
  - b) FINRA made clear that a broker-dealer that is holding an application for a deferred variable annuity and a non-negotiated check from a customer written to an insurance company for a period of seven business days or less would not be in violation of FINRA Rules 2330 if the reason that the application and check are being held is to allow a principal to complete his or her review of the transaction pursuant to proposed Rule 2330.

B. Recommendation requirements revised

1. FINRA revised proposed Rule 2821 to state that “[n]o member or person associated with a member shall recommend to any customer the purchase or exchange of a deferred variable annuity unless such member or person associated with a member *has a reasonable basis to believe* that the transaction is suitable in accordance with Rule 2310.”
2. FINRA is substituting the phrase “has a reasonable basis to believe” for “has determined,” which appeared in the prior draft of the rule.
3. FINRA rationale: FINRA softened the review requirement in response to comments that the reasonable basis standard was more strict than with other similar financial products.

C. Non-recommended transactions conditionally excluded. FINRA revised the rule conditionally so that it does not apply to non-recommended transactions, such as situations where the member is acting solely as an order taker. FINRA believed Rule 2821 should not prevent a fully informed customer from making his or her own investment decision.

1. Conditional exclusion from rule, however.
  - a) A registered principal “may authorize the processing of the transaction if the registered principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the registered principal has not approved the transaction, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity.”
2. FINRA rationale:
  - a) Change allows a customer to decide to continue with the non-



- b) recommended purchase or exchange of a deferred variable annuity notwithstanding the broker-dealer's belief that the transaction would be viewed as unsuitable if it had been recommended.
- c) The new requirement that the principal independently determine that the transaction was not recommended adds another layer of protection. Requirement "should discourage salespersons from attempting to bypass compliance requirements for recommended sales by simply checking the 'not recommended' box on a form."
- d) Customers must indicate an explicit intent to continue with the non-recommended transaction notwithstanding the unsuitability determination, which will help ensure that the customer's decision is an informed one.

D. *"Undue concentration" standard eliminated.* FINRA eliminated prior requirements that registered principals consider "the extent to which the amount of money invested would result in an undue concentration in a deferred variable annuity."

E. The annuity or deferred variable annuities should be evaluated in "the context of the customer's overall investment portfolio."

1. FINRA Rationale:

- a) Requirement was unclear and could cause confusion. Because other provisions in Rule 2330 already capture the important aspects of this "undue concentration" determination, FINRA has eliminated it as superfluous.

F. Generic disclosure allowed

- 1. Under recommendation requirements, FINRA clarified that required disclosure may be generic and not specific to the product. Clarification now requires that "the customer has been informed, *in general terms*, of various features of deferred variable annuities. . . ."

2. FINRA rationale:

- a) Simply a clearer statement of original rule's intent.

G. "Unique features" requirement relaxed and expanded

- 1. Provision now states that salesperson must have "a reasonable basis to believe that . . . the customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit."

2. FINRA Rationale:

a) FINRA accepted commenters' position that there are other financial products that have features similar to those of a deferred variable annuity, so a requirement that the customer would benefit from the *unique* features was relaxed to benefiting from *certain* features.

b) Living benefits added to the list of certain features that may be beneficial for customer in addition to death benefit.

#### H. Required surveillance practices for replacement activities clarified

1. FINRA indicated that principal need not examine every transaction when salesperson has a potentially higher rate of replacement sales. FINRA emphasized instead review on a periodic basis via exception reporting rather than as part of the principal review of each exchange transaction

2. FINRA revised the supervisory procedures guarding against inappropriate replacement practices so that, "the member also must (1) implement surveillance procedures to determine if the member's associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of this Rule, other applicable FINRA rules, or the federal securities laws ("inappropriate exchanges") and (2) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges."

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## **The NAIC Annuity Disclosure Model Regulation: Disclosure Standards in Annuity Distribution**

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### **I. Scope of Outline**

A. This outline summarizes the elements of the NAIC Annuity Disclosure Model Regulation, the required Disclosure Statement and the required NAIC Buyer's Guide to Fixed Deferred Annuities, including a supplement for Equity Indexed Annuities.

B. The NAIC Annuity Disclosure Model Regulation can be found at NAIC Model Reporting Service 245-I (April 2006).

### **II. Objective of the Annuity Disclosure Model Regulation**

A. To provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education.

1. The regulation specifies the minimum information which must be disclosed and the method and timing of delivering it.
2. The regulation seeks to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

### **III. Annuities Covered by the Regulation**

A. All group and individual annuity contracts, except:

1. Registered or non-registered variable annuities.
2. Immediate and deferred annuities having only non-guaranteed elements.

3. Annuities used to fund:

- a) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);
- b) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,
- c) A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or
- d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

4. Structured Settlement Annuities.

5. Note: Under the model regulation, states may optionally elect to exclude charitable gift annuities and structured settlement annuities also.

**IV. Information Mandated in Required NAIC Disclosure Statement**

- A. The generic name of the contract, the company product name, if different, form number, and the fact that it is an annuity;
- B. The insurer's name and address;
- C. A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:
  - 1. The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;
  - 2. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
  - 3. Periodic income options both on a guaranteed and non-guaranteed basis;
  - 4. Any value reductions caused by withdrawals from or surrender of the contract;
  - 5. How values in the contract can be accessed;
  - 6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. Impact of any rider, such as a long-term care rider.

D. Specific dollar amount or percentage charges and fees, which must be listed with an explanation of how they apply.

E. Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

F. Insurers must define terms used in the disclosure statement in language understandable by a typical person in the target market.

**V. Required NAIC Buyer's Guide to Fixed Deferred Annuities (appears at the end of the outline).**

A. A Buyer's Guide prepared by the NAIC provides information about different aspects of annuities, such as

1. What an annuity is.
2. Descriptions of the different kinds of annuities.
  - a) Single premium or multiple premium.
  - b) Immediate or deferred.
  - c) Fixed or variable.
3. How interest rates are set for the deferred variable annuity.
  - a) Explanation of current interest rate.
  - b) Explanation of minimum guaranteed rate.
  - c) Explanation of multiple interest rates.
4. Description of charges in the contract.
  - a) Surrender or withdrawal charges.
  - b) Free withdrawal features.
  - c) Contract fee.
  - d) Transaction fee.
  - e) Percentage of premium charge.
  - f) Premium tax charge.

5. Fixed Annuity Benefits

- a) Annuity income payments.
- b) Annuity payment options.
  - (1) Life only.
  - (2) Life annuity with period certain.
  - (3) Joint and survivor.

**VI. Timetable for Delivery of Required Disclosure Statement and Buyer's Guide:**

A. At or before the time of application if annuity application is taken in a *face-to-face meeting*.

B. No later than five (5) business days after the completed application is received by the insurer, if annuity application is taken by means *other than in a face-to-face meeting*.

1. With applications received from a *direct solicitation through the mail*:

- a) Inclusion of a Buyer's Guide and Disclosure Statement in the direct mail solicitation satisfies the requirement for delivery no later than five (5) business days after receipt of the application.

2. *For applications received via the Internet*:

- a) Taking reasonable steps to make the Buyer's Guide and Disclosure Statement available for viewing and printing on the insurer's website satisfies the requirement for delivery no later than five (5) business day of receipt of the application.

3. Annuity solicitations in other than face-to-face meetings must include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. Alternatively, the insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

4. *Extended Free-Look Period*: where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. The free look runs concurrently with any other free look provided under state law or regulation.

**VII. Required Report to Contract Owners**

A. For annuities in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer

must provide each contract owner with a report, *at least annually*, on the status of the contract that contains at least the following information:

1. The beginning and end date of the current report period;
2. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
3. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
4. The amount of outstanding loans, if any, as of the end of the current report period.

**VIII.** ACLI's State-by-State Index to the NAIC Annuity Disclosure Model Regulation Appears on page 10 following the outline on the NAIC Suitability in Annuity Transactions Model Regulation.

**IX. NAIC Buyer's Guide: Appears on Pages Immediately Following This Outline**

- A. Fixed Deferred Annuities are highlighted at the front of the Guide.
- B. Equity Index Annuities are highlighted in a supplement at the back of the Guide.

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**Annuity Buyer's Guide**

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

***Reprinted by XYZ Life Insurance Company***

It is important that you understand the differences among various annuities so you can choose the kind that best fits your needs. This guide focuses on fixed deferred annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your agent or the company. Make sure you're satisfied with the answers before you buy.

**WHAT IS AN ANNUITY?**

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought



for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.

An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.

Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefits of annuity contracts.

A deferred annuity has two parts or periods. During the accumulation period, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity. During the second period, called the payout period, the company pays income to you or to someone you choose.

## **WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?**

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're considering and the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

This Buyer's Guide will focus on individual fixed deferred annuities.

### **Single Premium or Multiple Premium**

You pay the insurance company only one payment for a single premium annuity. You make a series of payments for a multiple premium annuity. There are two kinds of multiple premium annuities. One kind is a flexible premium contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a scheduled premium annuity, the contract spells out your payments and how often you'll make them.

### **Immediate or Deferred**

With an immediate annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a deferred annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

### **Fixed or Variable**

#### **• Fixed**

During the accumulation period of a fixed deferred annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the

payout period, the amount of each income payment to you is generally set when the payments start and will not change.

- **Variable**

During the accumulation period of a variable annuity, the insurance company puts your premiums (less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account).

### **HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?**

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time. Usually, what these rates will be is entirely up to the insurance company.

#### **Current Interest Rate**

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not change for some time period.

- The initial rate is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.

- The renewal rate is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.

#### **Minimum Guaranteed Rate**

The minimum guaranteed interest rate is the lowest rate your annuity will earn. This rate is stated in the contract.

#### **Multiple Interest Rates**

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods.

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. You get only one of the accumulated values depending on which benefit you choose.

### **WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?**

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

## **Surrender or Withdrawal Charges**

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a withdrawal charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a surrender charge. In either case, the company may figure the charge as a percentage of the value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a window, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a bail-out option.

In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a rolling surrender or withdrawal charge.

Some annuity contracts have a market value adjustment feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with a MVA feature may credit a higher rate than an annuity without that feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.

## **Free Withdrawal**

Your annuity may have a limited free withdrawal feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.

## **Contract Fee**

A contract fee is a flat dollar amount charged either once or annually.

## **Transaction Fee**

A transaction fee is a charge per premium payment or other transaction.

## **Percentage of Premium Charge**

A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.

## **Premium Tax**

Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

## **WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?**

### **Annuity Income Payments**

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's benefit rate in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.

There is a table of guaranteed benefit rates in each annuity contract. Most companies have current benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company generally uses the benefit rate in effect at that time to figure the amount of your income payment.

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you.

- **Life Only** - The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependents have enough income of their own.

- **Life Annuity with Period Certain** - The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This period certain is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity. Because the "period certain" is an added benefit, each income payment will be smaller than in a life-only option.

- **Joint and Survivor** - The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be able to choose to have payments continue for a set length of time. Because the survivor feature is an added benefit, each income payment is smaller than in a life-only option.

### **Death Benefit**

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

### **CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?**

While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.

### **WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?**

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.

Part of the payments you receive from an annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you withdraw the accumulation before age 59 1/2. The Internal Revenue Code also has rules about distributions after the death of a contract holder.

Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.

You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.

### **WHAT IS A "FREE LOOK" PROVISION?**

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a free look or right to return period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.

## **HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?**

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- How much retirement income will I need in addition to what I will get from Social Security and my pension?
- Will I need that additional income only for myself or for myself and someone else?
- How long can I leave my money in the annuity?
- When will I need income payments?
- Does the annuity let me get money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?

## **WHAT QUESTIONS SHOULD I ASK MY AGENT OR THE COMPANY?**

- Is this a single premium or multiple premium contract?
- Is this an equity-indexed annuity?
- What is the initial interest rate and how long is it guaranteed?
- Does the initial rate include a bonus rate and how much is the bonus?
- What is the guaranteed minimum interest rate?
- What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?
- Are there withdrawal or surrender charges or penalties if I want to end my contract early and take out all of my money? How much are they?
- Can I get a partial withdrawal without paying surrender or other charges or losing interest?
- Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?
- Is there a market value adjustment (MVA) provision in my annuity?

- What other charges, if any, may be deducted from my premium or contract value?
- If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change?
- Is there a death benefit? How is it set? Can it change?
- What income payment options can I choose? Once I choose a payment option, can I change it?

## **FINAL POINTS TO CONSIDER**

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule of charges that could mean new expenses you must pay directly or indirectly.

You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in. Be sure you understand the effect of all charges.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.

Remember that the quality of service that you can expect from the company and the agent is a very important factor in your decision.

When you receive your annuity contract, **READ IT CAREFULLY!!** Ask the agent and company for an explanation of anything you don't understand. Do this before any free look period ends.

Compare information for similar contracts from several companies. Comparing products may help you make a better decision.

If you have a specific question or can't get answers you need from the agent or company, contact your state insurance department.

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## **APPENDIX I-EQUITY-INDEXED ANNUITIES**

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

### **WHAT ARE EQUITY-INDEXED ANNUITIES?**

An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500), which is an equity index. The value of any index varies from day to day and is not predictable. (Note: S&P 500 is a registered trademark of the McGraw-Hill Companies, Inc., used with permission.)

When you buy an equity-indexed annuity you own an insurance contract. You are not buying shares of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

### **HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?**

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest, if any, is calculated and credited. How much additional interest you get and when you get it depends on the features of your particular annuity.

Your equity-indexed annuity, like other fixed annuities, also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death benefits. The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases.

## **WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?**

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula.

### **Indexing Method**

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

### **Term**

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

### **Participation Rate**

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% ( $9\% \times 70\% = 6.3\%$ ). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

### **Cap Rate or Cap**

Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.

### **Floor on Equity Index-Linked Interest**

The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases, your fixed annuity will have a minimum guaranteed value.

## **Averaging**

In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.

## **Interest Compounding**

Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.

## **Margin/Spread/Administrative Fee**

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This percentage, sometimes referred to as the "margin," "spread," or "administrative fee," might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% ( $10\% - 2.25\% = 7.75\%$ ). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.

## **Vesting**

Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

## **HOW DO THE COMMON INDEXING METHODS DIFFER?**

### **Annual Reset**

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.

### **High-Water Mark**

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

## Low-Water Mark

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

## Point-to-Point

The index-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.

## WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

Generally, equity-indexed annuities offer preset combinations of features. You may have to make trade-offs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

Features	Trade-Offs
Annual Reset	
Since the interest earned is "locked in" annually and the index value is "reset" at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.	Your annuity's participation rate may change each year and generally will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year.
High-Water Mark	
Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle	Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest

of the term, then drops off at the end of the term.

anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

#### Low-Water Mark

Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end of the term.

Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.

#### Point-to-Point

Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other designs.

Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end of the term.

### **WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?**

#### **Cap on Interest Earned**

While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.

#### **Averaging**

Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of index-linked interest you earn when the index rises either near the start or at the end of the term.

## **Participation Rate**

The participation rate may vary greatly from one annuity to another and from time to time within a particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.

## **Interest Compounding**

It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a higher participation rate.

## **WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?**

In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

## **ARE DIVIDENDS INCLUDED IN THE INDEX?**

Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.

## **HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?**

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?

Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?

Or, am I somewhere in between these two extremes and willing to take some risks?

## **HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?**

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be

misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.

## **QUESTIONS YOU SHOULD ASK YOUR AGENT OR THE COMPANY**

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities.

- How long is the term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?
- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?
- Can I get a partial withdrawal without paying charges or losing interest? Does my contract have vesting? If so, what is the rate of vesting?

## **Final Points to Consider**

Remember to read your annuity contract carefully when you receive it. Ask your agent or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the agent or company, contact your state insurance department.



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**NAIC Insurance and Annuities Replacement Model Regulation:  
A Systemic Approach to Appropriate Sales Practices**

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**I. NAIC Insurance and Annuities Replacement Model Regulation**

A. In June 2000, the NAIC adopted substantial amendments to the 1998 Insurance and Annuities Replacement Model Regulation. This regulation establishes substantial protections for consumers through required systems of supervision, control, monitoring, and recordkeeping for insurers and producers. Additionally, the regulation requires plain-English notices, and signed disclosure about the replacement transaction.

1. The NAIC's Model Regulation and amendments promote uniformity among state insurance regulations.
2. Citation: Insurance and Annuities Replacement Model Regulation, NAIC Model Regulation Service-July 2006 at III-621-1.

**B. Approach of the amended regulation**

1. The amended regulation establishes duties for insurance producers, replacing insurers, and existing insurers designed to protect consumers.
  - a. For example, insurers using insurance producers must, among other things:
    - (1) Maintain a *system of supervision and control*;
    - (2) Have the *capacity to monitor* each producer's life and annuity replacements for that insurer;
    - (3) Ascertain that required *sales material and illustrations are complete and accurate*; and
    - (4) *Maintain records* of required notification forms and illustrations that can be produced.
  - b. A required notice of replacement must be presented, read to consumers, and signed by the producer and consumer.
2. The regulation lists illustrative violations, and establishes penalties that may include the revocation or suspension of a producer's or company's license, monetary fines, and forfeiture of commissions or compensation. Commissioners may require insurers to make

restitution, and restore policy values with interest when violation are material to the sale. [See, Section 8 of the regulation].

C. Overview of Issue

1. A replacement occurs when an individual uses existing life insurance policy or annuity contract values to purchase a new policy or contract.
2. A replacement may involve the use of the entire value of an existing policy or contract, as in the case of a surrender, or it may involve the use of only a portion of the existing values.
3. Under the NAIC Model as amended in 2000, the use of *any* portion of the values of an existing policy or contract to purchase a new policy or contract constitutes replacement, including borrowing, assigning dividends, lapsing, or forfeiting.
  - a. External replacement occurs when a company replaces the life or annuity product of another company.
  - b. Internal replacement occurs when a company replaces a life or annuity contract that it has already issued.

D. *Purpose* of the Amended NAIC Replacement Regulation

1. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.
2. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions, and to:
  - a. Assure that purchasers receive information with which a decision can be made in his or her own best interest;
  - b. Reduce the opportunity for misrepresentation and incomplete disclosure; and
  - c. Establish penalties for failure to comply with the regulation.

E. *Regulation Applies to Variable Life Insurance and Variable Annuity Replacements*

1. The term *replacement* is defined in the regulation to mean a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
  - a. Lapsed, forfeited, surrendered or partially surrendered,

assigned to the replacing insurer or otherwise terminated;

- b. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
  - c. Amended so as to effect either a reduction in force of for which benefits would be paid;
  - d. Reissued with any reduction in cash value; or
  - e. Used in a financed purchase.
2. The regulation excuses variable life and variable annuity contracts from requirements in Sections 5(A)(2) and 6(B) to provide illustrations or policy summaries.
- a. In place of the policy summaries and illustrations requirement, the regulation mandates “premium or contract distribution amounts and identification of the appropriate prospectus or offering circular” instead.
  - b. In all other respects, the regulation fully applies to individual variable contract replacements.

F. *Exceptions* from regulation for group contracts

1. The regulation does not apply to transactions involving:
- a. Policies or contracts used to fund:
    - (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
    - (2) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
    - (3) A governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
    - (4) A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
  - b. Group life insurance or group annuities where there is no

direct solicitation of individuals by an insurance producer.

c. Credit life insurance.

#### G. Duties of Producers and Insurers in Replacement Transactions

##### 1. Duties of insurers that use producers [Section 4.]

a. Under the regulation, each insurer must:

(1) *Maintain a system of supervision and control* to insure compliance with the requirements of this regulation that shall *include at least* the following:

- (a) *Inform its producers of the requirements of the regulation* and incorporate the requirements of the regulation into all relevant *producer training manuals* prepared by the insurer;
- (b) *Provide to each producer a written statement of the company's position with respect to the acceptability of replacements* providing guidance to its producer as to the appropriateness of these transactions;
- (c) *A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with the regulation's standards;*
- (d) Procedures to *confirm* that the *requirements* of this regulation have been *met*; and
- (e) Procedures to *detect transactions that are replacements of existing policies* or contracts by the existing insurer, but that have not been identified as such by the applicant or producer.

(2) *Have the capacity to produce*, upon request, and make available to the Insurance Department, *records of each producer's*:

- (a) *Replacements*, including financed purchases, as a percentage of the producer's total annual sales for life insurance and annuity contracts not exempted from this regulation;
- (b) *Number of lapses* of policies and contracts

by the producer as a percentage of the producer's total annual sales for life insurance and annuity contracts not exempted from this regulation;

- (c) Number of transactions that are *unidentified replacements of existing policies* or contracts by the existing insurer detected by the company's monitoring system as required by Section (4)(A)(5) of the regulation; and
  - (d) *Replacements, indexed by replacing producer and existing insurer.*
- (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
  - (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Attachment 1 to the regulation;
  - (5) When the applicant has existing policies or contracts, retain completed and signed copies of the notice regarding replacements in its home or regional office for at least five years after the termination or expiration of the proposed policy or contract;
  - (6) When the applicant has existing policies or contracts, obtain and retain copies of any sales material as required by Section 3(E) of the regulation, the basic illustration and any supplemental illustrations used in the sale and the producer's and applicant's signed statements with respect to financing and replacement in its home or regional office for at least five years after the termination or expiration of the proposed policy or contract
  - (7) Records required to be retained by the regulation may be maintained in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process which accurately reproduces the actual document.

## 2. Duties of Replacing Insurers that Use Producers [Section 6].

- a. Where a replacement is involved in the transaction, the replacing insurer shall:
  - (1) Verify that the required forms are received and are in compliance with the regulation;
  - (2) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available *illustration or policy summary* for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer; [*note: this illustration and policy summary requirement does not apply to variable contracts.*]
  - (3) Be able to produce copies of the notification regarding replacement required in Section 4(B), *indexed by producer, in its home or regional office* for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
  - (4) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a *variable or market value adjustment policy or contract*, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.
- b. In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control [*internal replacements*] allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to *financed purchases* the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

- c. If an insurer *prohibits the use of sales material other than that approved by the company*, as an alternative to the requirements of Section 3(E) the insurer may:
- (1) Require with each application a statement *signed by the producer* that:
    - Represents that the producer used only company approved sales material;
    - *Lists*, by identifying number or other descriptive language, the *sales material that was used*; and
    - States that copies of all sales material were left with the applicant in accordance with Section 3(D); and
  - Within ten days of the issuance of the policy or contract:
    - (a) Notify the applicant by sending a letter or by verbal communication with the applicant *by a person whose duties are **separate from the marketing area** of the insurer*, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Section 3(D);
    - (b) Provide the applicant with a *toll free number* to contact *company personnel involved in the compliance function* if such is not the case; and
    - (c) Stress the importance of retaining copies of the sales material for future reference; and
  - Keep a copy of the letter or other verification in the policy file at the home or regional office for at least five years after the termination or expiration of the policy or contract.

### 3. Duties of the Existing Insurer [Section 6].

- a. Where a replacement is involved in the transaction, the existing insurer shall:
- (1) Upon notice that its existing policy or contract may be replaced or a policy may be part of a financed purchase, *retain copies* of the notification in its home or regional office, *indexed by replacing insurer*, notifying it of the



replacement for at least five years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.

(2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.

(3) Upon receipt of a request to borrow, surrender or withdraw any policy or contract values, send to the applicant a notice, advising the policy or contract owner of the effect release of policy or contract values will have on the non-guaranteed elements, face amount or surrender value of the policy or contract from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy or contract owner. In the case of *consecutive automatic premium loans or systematic withdrawals* from a contract, the insurer is only required to send the notice at the time of the first loan or withdrawal.

#### 4. Duties of Producers [Section 4].

- a. A producer who initiates an application must submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.
- b. If the applicant answered "yes" to the question regarding existing coverage referred to in Subsection (A), the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Attachment 1 to the regulation or other substantially similar form approved by the commissioner. *The notice shall be signed by both the applicant and the producer* attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.
- c. The notice shall list all life insurance policies or annuities

proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

- d. In connection with a replacement transaction *the producer shall leave with the applicant* at the time an application for a new policy or contract is completed *the original or a copy of all sales material*. With respect to electronically presented sales material, it shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.
- e. Except as provided in Section 5(C) of the regulation, in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, *a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations used in the transaction*

#### H. Selected Definitions

- 1. Section 2(D) defines the term *financed purchase* as “the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy.”
  - a. If a withdrawal, surrender, or borrowing involving the policy values of an existing policy are used to pay premiums on a new policy owned by the same policyholder *within thirteen months before or after the effective date of the new policy* and is known by the replacing insurer, or if the withdrawal, surrender, or borrowing is shown on any illustration of the existing and new policies made available to the prospective policyowner by the insurer or its producers, it will be *deemed prima facie evidence of a financed purchase*.
- 2. Section 2(I) defines the term registered contract as “a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.”

I. Several aspects of the amended NAIC model regulation parallel SEC and FINRA positions concerning Section 1035 exchanges and bonus annuity sales.

1. Selected list of parallel regulatory concepts

- a. FINRA Guideline on Variable Life Insurance Distribution: NASD NTM 00-44 (June 2000).
- b. FINRA Guidelines on Supervisory Responsibilities: NASD NTM 99-45 (June 1999).
- c. FINRA Statement on Variable Annuity Distribution: NASD NTM 99-35 (May 1999).
- d. SEC Office of Compliance Inspections and Examinations: Indicators of “Good” Internal Controls in Variable Contract Distribution.

(1) A compilation of the SEC’s indicators drawn from speeches and seminar comments is discussed in Wilkerson, *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 20.

e. SEC Examination of Variable Annuity “Bonus” Programs

(1) Several of the items requested in the SEC’s inspection letter requested documents and information that the amended NAIC Model Replacement Regulation also addresses.

(a) Scope of documents requested in the SEC’s examinations was outlined in *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 6.

a. FINRA and SEC inspection sweeps focusing on “Section 1035 exchanges” of variable contracts and “life financing” arrangements (1998 and 1996.)

(1) These sweeps and the documentation they elicited were discussed in *Variable Product Distribution: A Continuing Study of Compliance Examinations, Inspections Sweeps and Evolving Regulatory Standards*, ACLI Compliance Section Annual Meeting (July 19, 2000) at 11 and 15.

J. NAIC Model Replacement Regulation: State-by-State Chart

1. A chart listing the status of the NAIC Model Replacement Regulation under state insurance law appears in the pages following Attachment 1 and 2 below.

**[NAIC Replacement Disclosure Examples Follow on Next Page]**

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## Attachment 1 to this Outline on the Model Replacement Regulation

### IMPORTANT NOTICE: REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

*This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.*

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy or contract and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? \_\_\_\_  
YES \_\_\_\_ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? \_\_\_\_ YES \_\_\_\_ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

**INSURER NAME**

**CONTRACT OR POLICY#**

**INSURED OR ANNUITANT: REPLACED (R) OR FINANCING (F)**

1.

2.

3.

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because \_\_\_\_\_  
\_\_\_\_\_.

I certify that the responses herein are, to the best of my knowledge, accurate:

\_\_\_\_\_  
Applicant's Signature and Printed Name Date

\_\_\_\_\_  
Producer's Signature and Printed Name Date

\_\_\_\_\_  
I do not want this notice read aloud to me. \_\_\_\_\_ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

- PREMIUMS:**
- Are they affordable?
  - Could they change?
  - You're older--are premiums higher for the proposed new policy?
  - How long will you have to pay premiums on the new policy? On the old policy?
- POLICY VALUES:**
- New policies usually take longer to build cash values and to pay dividends.
  - Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
  - What surrender charges do the policies have?
  - What expense and sales charges will you pay on the new policy?
  - Does the new policy provide more insurance coverage?
- INSURABILITY:**
- If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
  - You may need a medical exam for a new policy.
  - Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
  - Suicide limitations may begin anew on the new coverage.
- IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:**
- How are premiums for both policies being paid?
  - How will the premiums on your existing policy be affected?
  - Will a loan be deducted from death benefits?
  - What values from the old policy are being used to pay premiums?
- IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:**
- Will you pay surrender charges on your old contract?
  - What are the interest rate guarantees for the new contract?
  - Have you compared the contract charges or other policy expenses?
- OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:**
- What are the tax consequences of buying the new policy?
  - Is this a tax free exchange? (See your tax advisor.)
  - Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?



Will the existing insurer be willing to modify the old policy?  
How does the quality and financial stability of the new  
company compare with your existing company?

**(Attachment 2 to Replacement Outline)**

**NOTICE REGARDING REPLACEMENT  
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?**

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one--or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

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## ACLI LAW SURVEY

### Replacement of Life Insurance and Annuities

This multi-state survey identifies the states that have based their life and annuity replacement requirements on the NAIC's Life and Annuities Replacement Model Regulation. The compilation specifically includes a summary of exemptions and notes if states follow the NAIC model with respect to exemptions. (Updated to January 1, 2013).

Rather than summarizing other replacement requirements, the compilation provides citations to state law or regulations that correspond with several key elements of the NAIC model: definitions, duties of producers and insurers, and forms. Please refer to ACLI's *Law Survey: Free Look* for information on free look requirements for replacement policies. Links are provided from the state name column to the corresponding chapters of the *Market Conduct Compliance Service* on ACLI's website where the cited provisions and most forms are located. (Please consult the state chapter of the compliance service for any forms not linked directly from the survey.)

This survey does not constitute a legal opinion by ACLI staff. The *Law Surveys* are reviewed and updated annually. Users are encouraged to refer to the text of the statutes and regulations cited for the most current and complete information.

State	Applicability and Exemptions	Key Elements/Citations
Alabama	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>AL Admin. Code 482-1-133-.02</p> <p>Follows NAIC model</p>	<p>Definitions:</p> <p>AL Admin. Code 482-1-133-.03</p> <p>Duties:</p> <p>Producers:</p> <p>AL Admin. Code 482-1-133-.04</p> <p>All insurers using producers:</p> <p>AL Admin. Code 482-1-133-.05</p> <p>Replacing insurers that use producers:</p> <p>AL Admin. Code 482-1-133-.06</p> <p>Existing insurers:</p> <p>AL Admin. Code 482-1-133-.07</p> <p>Direct response:</p> <p>AL Admin. Code 482-1-133-.08</p> <p>Forms:</p> <p>AL Admin. Code 482-1-133 Appendix A; Appendix B; and Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
Alaska	Applies to life insurance and annuities.  Exemptions: AK Admin. Code tit. 3 §26.790  Follows NAIC model	Definitions: AK Admin. Code tit. 3 §26.819 Duties: Producers: AK Admin. Code tit. 3 §26.795 All insurers using producers: AK Admin. Code tit. 3 §26.800 Replacing insurers that use producers: AK Admin. Code tit. 3 §26.805 Existing insurers: AK Admin. Code tit. 3 §26.810 Direct response: AK Admin. Code tit. 3 §26.815 Forms: AK Admin. Code tit. 3 §26.795, Appendix A AK Admin. Code tit. 3 §26.815, Appendix A, Appendix B

State	Applicability and Exemptions	Key Elements/Citations
Arizona	Applies to life insurance and annuities.  Exemptions: AZ Rev. Stat. Ann. §20-1241.01  Follows NAIC model	Definitions: AZ Rev. Stat. Ann. §20-1241 Duties: Producers: AZ Rev. Stat. Ann. §20-1241.03 All insurers using producers: AZ Rev. Stat. Ann. §20-1241.04 Replacing insurers: AZ Rev. Stat. Ann. §20-1241.05 Existing insurers: AZ Rev. Stat. Ann. §20-1241.06 Direct response: AZ Rev. Stat. Ann. §20-1241.07 Forms: AZ Admin. Code R20-6-212 NAIC Replacement Model Appendix A, Appendix B, Appendix C adopted by reference.

State	Applicability and Exemptions	Key Elements/Citations
Arkansas	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>AR ADC INS 97</p> <p>AR Bulletin 14-83</p> <p>Follows NAIC Model</p>	<p>Definitions:</p> <p>Duties:</p> <p>Producers:</p> <p>AR Code Ann. §23-66-307</p> <p>AR Bulletin 6-89</p> <p>All insurers using producers:</p> <p>AR ADC INS 97</p> <p>Replacing insurers:</p> <p>AR ADC INS 97</p> <p>Existing insurers:</p> <p>AR ADC INS 97</p> <p>Direct response:</p> <p>AR ADC INS 97</p> <p>Replacements that do not conform with AR Code Ann. §23-66-307 are defined as "churning."</p> <p>AR Code Ann. §23-66-206 (2)A.</p> <p><i>See also</i> guidance in AR Bulletin 1-2010, <b>AR Bulletin 4-2012</b> and AR Bulletin 8-2009 and AR Bulletin 8-2004.</p>

State	Applicability and Exemptions	Key Elements/Citations
California	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>CA Ins. Code §10509.3</p> <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance when a contractual change or a conversion privilege is being exercised or when a term conversion privilege is exercised among corporate affiliates</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same insurer</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, with provisos</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> </ul>	<p>Definitions:</p> <p>CA Ins. Code §10509.2</p> <p>CA Ins. Code §10509.3</p> <p>Duties:</p> <p>Producers:</p> <p>CA Ins. Code §10509.4</p> <p>Insurers:</p> <p>CA Ins. Code §10509.5</p> <p>All insurers using producers:</p> <p>CA Ins. Code §10509.6</p> <p>Direct response:</p> <p>CA Ins. Code §10509.7</p> <p>Forms:</p> <p>CA Ins. Code §10509.4 (d)</p>

State	Applicability and Exemptions	Key Elements/Citations
Colorado	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>3 CO ADC INS 4-1-4 Section 3</p> <p>Follows NAIC Model</p>	<p>Definitions:</p> <p>3 CO ADC INS 4-1-4 Section 4</p> <p>Duties:</p> <p>Producers:</p> <p>3 CO ADC INS 4-1-4 Section 5</p> <p>All insurers using producers:</p> <p>3 CO ADC INS 4-1-4 Section 6</p> <p>Replacing insurers:</p> <p>3 CO ADC INS 4-1-4 Section 7</p> <p>Existing insurers:</p> <p>3 CO ADC INS 4-1-4 Section 8</p> <p>Direct response:</p> <p>3 CO ADC INS 4-1-4 Section 9</p> <p>Forms:</p> <p>3 CO ADC INS 4-1-4 Appendix A; Appendix B; and Appendix C</p>
Connecticut		<p>CT Gen. Stat. §38a-435 authorizes insurance commissioner to make regulations governing replacement of life insurance and annuities. No regulations to date.</p>

State	Applicability and Exemptions	Key Elements/Citations
Delaware	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>18 DE Admin. Code 1204-4.0</p> <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• An application to the existing insurer that issued the existing life insurance and a contractual change or conversion privilege is being exercised</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control.</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> <li>• Life insurance or annuity products issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums (with provisos)</li> </ul>	<p>Definitions:</p> <p>18 DE Admin. Code 1204-2.0 (replacement);</p> <p>18 DE Admin. Code 1204-3.0 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>18 DE Admin. Code 1204-5.0</p> <p>All insurers:</p> <p>18 DE Admin. Code 1204-6.0</p> <p>All insurers using producers:</p> <p>18 DE Admin. Code 1204-7.0</p> <p>Direct response:</p> <p>18 DE Admin. Code 1204-8.0</p> <p>Forms:</p> <p>18 DE Admin. Code 1204, Exhibit A</p>
District of Columbia		<p>No applicable provisions.</p>

State	Applicability and Exemptions	Key Elements/Citations
Florida	<p>Applies to life insurance and annuities.</p> <p>Exemptions (from some requirements):</p> <p>69 FL Admin. Code Ann. 69B-151.004 and</p> <p>69 FL Admin. Code Ann. 69O-151.004</p> <ul style="list-style-type: none"> <li>• Industrial insurance</li> <li>• Group, franchise, and individual credit life</li> <li>• Group life insurance and life insurance policies issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility of premiums</li> <li>• An application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised</li> <li>• Existing life insurance that is a non-convertible term life insurance policy which will expire in five years or less and cannot be renewed, unless such policy has tabular cash values</li> <li>• Proposed life insurance that is to replace existing life insurance issued under a binding or conditional receipt delivered by the same company</li> <li>• Variable life insurance or annuities under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account</li> </ul> <p>FL Stat. Ann. §627.4605</p> <p>A notice of replacement is not required in a transaction involving:</p> <ul style="list-style-type: none"> <li>• An application to the current insurer that issued the current policy or contract when a contractual change or conversion privilege is being exercised</li> <li>• A current policy or contract that is being replaced by the same insurer pursuant to a program filed with and approved by the office</li> <li>• A term conversion privilege that is being exercised among corporate affiliates.</li> </ul>	<p>Definitions:</p> <p>69 FL Admin. Code Ann. 69B-151.002</p> <p>69 FL Admin. Code Ann. 69O-151.002 (replacement);</p> <p>69 FL Admin. Code Ann. 69B-151.003</p> <p>69 FL Admin. Code Ann. 69O-151.003 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>69 FL Admin. Code Ann. 69B-151.005</p> <p>69 FL Admin. Code Ann. 69O-151.005 (agent);</p> <p>69 FL Admin. Code Ann. 69B-151.006</p> <p>69 FL Admin. Code Ann. 69O-151.006 (replacing agent)</p> <p>Replacing insurers:</p> <p>69 FL Admin. Code Ann. 69O-151.007</p> <p>Existing insurers:</p> <p>69 FL Admin. Code Ann. 69O-151.008</p> <p>Forms:</p> <p>69 FL Admin. Code 69B-151.010</p> <p>69 FL Admin. Code 69O-151.004</p> <p>OIR-B2-312 "Notice to Applicant Regarding Replacement of Life Insurance" given in Exhibit A and OIR-B2-313 "Comparative Information Form" given in Exhibit B,</p> <p>Also, for information on churning, see:</p> <p>FL Stat. Ann. §626.9541 (1)(aa);</p> <p>FL Stat. Ann. §627.573;</p> <p>69 FL Admin. Code Ann. 69B-151.201 et seq.; includes Form OIR-DO-1180 "Policy Disclosure Form and Instructions."</p>

State	Applicability and Exemptions	Key Elements/Citations
Georgia	<p>Applies to life insurance and annuities replacing existing life insurance.</p> <p>Exemptions:</p> <p>GA Comp. R. &amp; Regs. 120-2-24-.04</p> <ul style="list-style-type: none"> <li>• Replacement of annuity contracts</li> <li>• Credit life</li> <li>• Group life</li> <li>• Life insurance issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos</li> </ul>	<p>Definitions:</p> <p>GA Comp. R. &amp; Regs. 120-2-24-.03</p> <p>Duties:</p> <p>Producers:</p> <p>GA Comp. R. &amp; Regs. 120-2-24-.05 (agent)</p> <p>All insurers:</p> <p>GA Comp. R. &amp; Regs. 120-2-24-.06</p> <p>All insurers using producers (agents):</p> <p>GA Comp. R. &amp; Regs. 120-2-24-.07</p> <p>Direct response:</p> <p>GA Comp. R. &amp; Regs. 120-2-24-.08</p> <p>Forms:</p> <p>GA Comp. R. &amp; Regs. 120-2-24-.05, Exhibit A</p> <p>GA Comp. R. &amp; Regs. 120-2-24-.08, Exhibit A</p>
Hawaii	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>HI Rev. Stat. §431:10D-501</p> <p>Follows NAIC model</p>	<p>Definitions:</p> <p>HI Rev. Stat. §431:10D-502</p> <p>Duties:</p> <p>Producers:</p> <p>HI Rev. Stat. §431:10D-503</p> <p>All insurers using producers:</p> <p>HI Rev. Stat. §431:10D-504</p> <p>Replacing insurers:</p> <p>HI Rev. Stat. §431:10D-505</p> <p>Existing insurers:</p> <p>HI Rev. Stat. §431:10D-506</p> <p>Direct response:</p> <p>HI Rev. Stat. §431:10D-507</p>

State	Applicability and Exemptions	Key Elements/Citations
Idaho	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>ID Admin. Code 18.01.41.011</p> <ul style="list-style-type: none"><li>• Credit life</li><li>• Group life or group annuities</li><li>• Existing insurer--An application to the insurer that issued the existing life insurance and a contractual change or conversion privilege being exercised</li><li>• Binding or conditional receipt issued by same company--proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li><li>• Common ownership or control--transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control, with provisos</li></ul>	<p>Definitions:</p> <p>ID Admin. Code 18.01.41.004 (replacement), ID Admin. Code 18.01.41.005 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>ID Admin. Code 18.01.41.012</p> <p>All insurers:</p> <p>ID Admin. Code 18.01.41.013</p> <p>All insurers using producers:</p> <p>ID Admin. Code 18.01.41.014</p> <p>Direct response:</p> <p>ID Admin. Code 18.01.41.015</p> <p>Forms:</p> <p>ID Admin. Code 18.01.41.016, Exhibit A</p>

State	Applicability and Exemptions	Key Elements/Citations
Illinois	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>IL Admin. Code tit. 50 §917.50</p> <ul style="list-style-type: none"><li>• Credit life</li><li>• Group life and group annuities</li><li>• Life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for the tax deductibility of premiums</li><li>• Registered contracts except that the appropriate prospectus or offering circular shall be given to the applicant</li><li>• Existing life insurance that is a non-convertible term life insurance policy which will expire in five years or less and cannot be renewed</li><li>• Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries under common ownership or control, with provisos</li><li>• The total cash surrender value of all existing policies which would be affected by the replacement is less than \$500 and the sum of their face amounts is less than \$5,000</li></ul>	<p>Definitions:</p> <p>IL Admin. Code tit. 50 §917.30 (replacement) IL Admin. Code tit. 50 §917.40 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>IL Admin. Code tit. 50 §917.60</p> <p>Replacing insurers:</p> <p>IL Admin. Code tit. 50 §917.70</p> <p>Direct response:</p> <p>IL Admin. Code tit. 50 §917.80</p> <p>Forms:</p> <p>IL Admin. Code tit. 50 §917, Exhibit A; Exhibit B; Exhibit C (direct response); Exhibit D (comparative information)</p>



State	Applicability and Exemptions	Key Elements/Citations
Indiana	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>760 IN Admin. Code 1-16.1-4</p> <ul style="list-style-type: none"><li>• Individual and group credit life</li><li>• Group life and life policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, with provisos</li><li>• An existing life insurance policy in which a contractual change or conversion privilege is being exercised</li></ul>	<p>Definitions:</p> <p>760 IN Admin. Code 1-16.1-2 (replacement) 760 IN Admin. Code 1-16.1-3 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>760 IN Admin. Code 1-16.1-5</p> <p>Replacing insurers:</p> <p>760 IN Admin. Code 1-16.1-6</p> <p>Existing insurers:</p> <p>760 IN Admin. Code 1-16.1-8</p> <p>Direct response:</p> <p>760 IN Admin. Code 1-16.1-7</p> <p>Forms:</p> <p>760 IN Admin. Code 1-16.1-12.5, Exhibit A 760 IN Admin. Code 1-16.1-13.5, Exhibit B (direct response)</p>

State	Applicability and Exemptions	Key Elements/Citations
Iowa	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>IA Admin. Code 191—16.23(507B)</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions:</p> <p>IA Admin. Code 191—16.22(507B)</p> <p>Duties:</p> <p>Producers:</p> <p>IA Admin. Code 191—16.24(507B)</p> <p>All insurers using producers:</p> <p>IA Admin. Code 191—16.25(507B)</p> <p>Replacing insurers:</p> <p>IA Admin. Code 191—16.26(507B)</p> <p>Existing insurers:</p> <p>IA Admin. Code 191—16.27(507B)</p> <p>Direct response:</p> <p>IA Admin. Code 191—16.28(507B)</p> <p>Forms:</p> <p>IA Admin. Code 191—16, Appendix A; Appendix B; Appendix C</p>
Kansas	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>KS Admin. Regs. 40-2-12 (b)</p> <ul style="list-style-type: none"><li>• Application for the new life insurance is made to the same insurer that issued the existing life insurance, and a contractual policy change or conversion privilege is being exercised</li><li>• New life insurance is provided under: (A) group life; or (B) mass marketed group life</li><li>• Existing life insurance is a non-convertible term policy with five years or less to expire and which cannot be renewed</li><li>• Solicitation is made by direct mail with provisos</li><li>• Policy is issued in connection with a pension, profit sharing, an individual retirement account, or other benefit plan qualifying for an income tax deduction of premiums</li></ul>	<p>Definitions:</p> <p>KS Admin. Regs. 40-2-12 (a)</p> <p>Duties:</p> <p>Producers:</p> <p>KS Admin. Regs. 40-2-12 (c), (d), (h), (i), (j)</p> <p>All insurers:</p> <p>KS Admin. Regs. 40-2-12 (e)</p> <p>Replacing insurers:</p> <p>KS Admin. Regs. 40-2-12 (f)</p> <p>Forms:</p> <p>KS Admin. Regs. 40-2-12 (g), Exhibit A (different insurer); Exhibit B (same insurer); Exhibit C</p>

State	Applicability and Exemptions	Key Elements/Citations
Kentucky	<p>Applies to life insurance.</p> <p>Exemptions: KY Rev. Stat. Ann. §304.12-030 (3)</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions: KY Rev. Stat. Ann. §304.12-030 (1) 806 KY Admin. Regs. 12:080, Section 1</p> <p>Duties: Producers: 806 KY Admin. Regs. 12:080, Section 3 All insurers using producers: 806 KY Admin. Regs. 12:080, Section 4</p> <p>Replacing insurers: 806 KY Admin. Regs. 12:080, Section 5</p> <p>Existing insurers: 806 KY Admin. Regs. 12:080, Section 6</p> <p>Direct response: 806 KY Admin. Regs. 12:080, Section 7</p> <p>Forms: 806 KY Admin. Regs. 12:080, Section 9, Office Forms A, B, and C (referenced); KY Bulletin 83-DM-004</p>

State	Applicability and Exemptions	Key Elements/Citations
Louisiana	<p>Applies to life insurance and annuities.</p> <p>Exemptions: LA Admin. Code 37:XIII.8905 (Reg. 70)</p> <p>Follows NAIC model but also includes exemption for insurer marketing under the Home Service Marketing Distribution System and does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions: LA Admin. Code 37:XIII.8903 (Reg. 70)</p> <p>Duties: Producers: LA Admin. Code 37:XIII.8907 (Reg. 70)</p> <p>All insurers using producers: LA Admin. Code 37:XIII.8909 (Reg. 70)</p> <p>Replacing insurers: LA Admin. Code 37:XIII.8911 (Reg. 70)</p> <p>Existing insurers: LA Admin. Code 37:XIII.8913 (Reg. 70)</p> <p>Direct response: LA Admin. Code 37:XIII.8915 (Reg. 70)</p> <p>Forms: LA Admin. Code 37:XIII.8921 (Reg. 70) Appendix A LA Admin. Code 37:XIII.8923 (Reg. 70) Appendix B LA Admin. Code 37:XIII.8925 (Reg. 70) Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
Maine	<p>Applies to life insurance and annuities.</p> <p>Exemptions: Code ME R. 02-031 Ch. 919 §1</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions: Code ME R. 02-031 Ch. 919 §2</p> <p>Duties:</p> <p>Producers: Code ME R. 02-031 Ch. 919 §3</p> <p>Insurers using producers: Code ME R. 02-031 Ch. 919 §4</p> <p>Replacing insurers: Code ME R. 02-031 Ch. 919 §5</p> <p>Existing insurers: Code ME R. 02-031 Ch. 919 §6</p> <p>Direct response: Code ME R. 02-031 Ch. 919 §7</p> <p>Forms: Code ME R. 02-031 Ch. 919 Appendix A; Appendix B (direct response); Appendix C (direct response)</p>

State	Applicability and Exemptions	Key Elements/Citations
Maryland	<p>Applies to life insurance and annuities.</p> <p>Exemptions: MD Regs. Code 31.09.05.02</p> <p>Follows NAIC model</p>	<p>Definitions: MD Regs. Code 31.09.05.03</p> <p>Duties:</p> <p>Producers: MD Regs. Code 31.09.05.04</p> <p>All insurers using producers: MD Regs. Code 31.09.05.05</p> <p>Replacing insurers: MD Regs. Code 31.09.05.06</p> <p>Existing insurers: MD Regs. Code 31.09.05.07</p> <p>Direct response: MD Regs. Code 31.09.05.08</p> <p>Forms: MD Regs. Code 31.09.05.10, Replacement Form A MD Regs. Code 31.09.05.11, Replacement Form B MD Regs. Code 31.09.05.12, Replacement Form C</p>

State	Applicability and Exemptions	Key Elements/Citations
Massachusetts	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>211 CMR 34.03</p> <ul style="list-style-type: none"><li>• Credit life</li><li>• Group life and group annuities</li><li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li><li>• Internal replacements where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control</li><li>• Non-contributory group life</li><li>• Life insurance policies issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility of premiums</li><li>• Registered contracts (exempt from some requirements with provisos)</li></ul>	<p>Definitions:</p> <p>211 CMR 34.02</p> <p>Duties:</p> <p>Producers:</p> <p>211 CMR 34.04</p> <p>All insurers:</p> <p>211 CMR 34.05</p> <p>All insurers using producers:</p> <p>211 CMR 34.06</p> <p>Direct response:</p> <p>211 CMR 34.07</p> <p>Forms:</p> <p>211 CMR 34.04</p>
Michigan	<p>Applies to life insurance, excluding annuities in definition of life insurance.</p> <p>Exemptions:</p> <p>MI Admin. Code 500.605</p> <ul style="list-style-type: none"><li>• Application for the new life insurance made to the same insurer that issued the existing life insurance or to an affiliate of the existing insurer</li><li>• New life insurance provided under any of the following plans with provisos: (a) group term life; (b) certain mass marketed policies; (c) life insurance policies issued in connection with a pension, profit sharing, or other benefit plan qualifying for tax-deductibility of premiums</li><li>• Existing life insurance is a nonconvertible term policy which cannot be renewed and which would expire within five years after the initiation of the transaction</li></ul>	<p>Definitions:</p> <p>MI Admin. Code 500.601</p> <p>Duties:</p> <p>Producers:</p> <p>MI Admin. Code 500.602</p> <p>All insurers:</p> <p>MI Admin. Code 500.603</p> <p>Replacing insurers:</p> <p>MI Admin. Code 500.604</p> <p>Forms:</p> <p>MI Bulletin 84-06</p>

State	Applicability and Exemptions	Key Elements/Citations
Minnesota	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>MN Stat. Ann. §61A.54</p> <ul style="list-style-type: none"><li>• Credit life</li><li>• Group life or group annuities</li><li>• Application to the existing insurer that issued the existing life insurance or annuity, where a contractual change or a conversion privilege is being exercised</li><li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li><li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li></ul>	<p>Definitions:</p> <p>MN Stat. Ann. §61A.53</p> <p>Duties:</p> <p>Producers:</p> <p>MN Stat. Ann. §61A.55</p> <p>All insurers:</p> <p>MN Stat. Ann. §61A.56</p> <p>All insurers using producers:</p> <p>MN Stat. Ann. §61A.57</p> <p>Direct response:</p> <p>MN Stat. Ann. §61A.58</p> <p>Forms:</p> <p>MN Stat. Ann. §61A.60, Subdivisions 1, 2, and 3</p>

State	Applicability and Exemptions	Key Elements/Citations
Mississippi	<p>Applies to life insurance and annuities.</p> <p>Exemptions: MS ADC INS 99-2 <b>Rule 14.01 (formerly Section 1)</b></p> <p>Follows NAIC model</p>	<p>Definitions: MS ADC INS 99-2 <b>Rule 14.02 (formerly Section 2)</b></p> <p>Duties:</p> <p>Producers: MS ADC INS 99-2 <b>Rule 14.03 (formerly Section 3)</b></p> <p>All insurers using producers: MS ADC INS 99-2 <b>Rule 14.04 (formerly Section 4)</b></p> <p>Replacing insurers: MS ADC INS 99-2 <b>Rule 14.05 (formerly Section 5)</b></p> <p>Existing insurers: MS ADC INS 99-2 <b>Rule 14.06 (formerly Section 6)</b></p> <p>Direct response: MS ADC INS 99-2 <b>Rule 14.07 (formerly Section 7)</b></p> <p>Forms: MS ADC INS 99-2 <b>Appendix A, Rule 14.11; Appendix B, Rule 14.12; and Appendix C, Rule 14.13</b></p>

State	Applicability and Exemptions	Key Elements/Citations
Missouri	<p>Applies to life insurance and annuities.</p> <p>Exemptions: 20 MO Code Regs. 400-5.400 (4)</p> <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control; with provisos</li> <li>• Policies issued in connection with a pension, profit sharing and individual retirement account or other benefit plan qualifying for tax deductibility of premium</li> <li>• Registered contracts (exempt from some requirements with provisos)</li> </ul>	<p>Definitions: 20 MO Code Regs. 400-5.400 (2) and (3)</p> <p>Duties:</p> <p>Producers: 20 MO Code Regs. 400-5.400 (5)</p> <p>All insurers: 20 MO Code Regs. 400-5.400 (6)</p> <p>All insurers using producers: 20 MO Code Regs. 400-5.400 (7)</p> <p>Direct response: 20 MO Code Regs. 400-5.400 (8)</p> <p>Forms: 20 MO Code Regs. 400-5.400, Exhibit A and Exhibit B</p>

State	Applicability and Exemptions	Key Elements/Citations
Montana	<p>Applies to life insurance and annuities.</p> <p>Exemptions: MT Admin. R. 6.6.304</p> <p>Follows NAIC model but does not include exemption for group life insurance and annuities used to fund prearranged funeral contracts and does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions: MT Admin. R. 6.6.303</p> <p>Duties:</p> <p>Producers: MT Admin. R. 6.6.305</p> <p>All insurers using producers: MT Admin. R. 6.6.311</p> <p>Replacing insurers: MT Admin. R. 6.6.306</p> <p>Existing insurers: MT Admin. R. 6.6.308</p> <p>Direct response: MT Admin. R. 6.6.307</p> <p>Forms: MT Admin. R. 6.6.313, NAIC model forms Appendix A; Appendix B; and Appendix C incorporated by reference</p>

State	Applicability and Exemptions	Key Elements/Citations
Nebraska	<p>Applies to life insurance and annuities.</p> <p>Exemptions: 210 NE Admin. Code Ch. 19 §003</p> <p>Follows NAIC model</p>	<p>Definitions: 210 NE Admin. Code Ch. 19 §004 (replacement); 210 NE Admin. Code Ch. 19 §005 (other)</p> <p>Duties:</p> <p>Producers: 210 NE Admin. Code Ch. 19 §006</p> <p>All insurers: 210 NE Admin. Code Ch. 19 §007</p> <p>All insurers using producers: 210 NE Admin. Code Ch. 19 §008</p> <p>Replacing insurers: 210 NE Admin. Code Ch. 19 §009 NE Bulletin CB-56</p> <p>Existing insurers: 210 NE Admin. Code Ch. 19 §010</p> <p>Direct response: 210 NE Admin. Code Ch. 19 §011</p> <p>Forms: 210 NE Admin. Code Ch. 19 Exhibit A</p>

State	Applicability and Exemptions	Key Elements/Citations
Nevada	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>NV Admin. Code 686A.540</p> <ul style="list-style-type: none"> <li>• Individual credit life</li> <li>• Group life insurance, group credit life insurance or life insurance issued in connection with a pension, profit-sharing or other benefit plan that qualifies for tax deductibility of premiums</li> <li>• Variable life under which the death benefits and cash values vary in accordance with the unit values of investments held in a separate account</li> <li>• Application made to an insurer under an existing policy for a contractual change or the exercise of a privilege of conversion</li> <li>• Existing policy which is a nonconvertible, term policy, will expire in five years or less and cannot be renewed</li> <li>• Proposed life insurance which is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Policy solicited through direct response with a face value of \$5,000 or less</li> </ul>	<p>Definitions:</p> <p>NV Admin. Code 686A.510</p> <p>NV Admin. Code 686A.530</p> <p>Duties:</p> <p>Producers:</p> <p>NV Admin. Code 686A.550</p> <p>NV Admin. Code 686A.567</p> <p>Replacing insurers:</p> <p>NV Admin. Code 686A.555</p> <p>NV Bulletin 2008-007 (annuities)</p> <p>Direct response:</p> <p>NV Admin. Code 686A.560</p> <p>Forms:</p> <p><b>NV Admin. Code 686A.563</b></p>

State	Applicability and Exemptions	Key Elements/Citations
New Hampshire	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>NH Code Admin. Ins 302.02</p> <p>Follows NAIC model</p>	<p>Definitions:</p> <p>NH Code Admin. Ins 302.03</p> <p>Duties:</p> <p>Producers:</p> <p>NH Code Admin. Ins 302.04</p> <p>All insurers using producers:</p> <p>NH Code Admin. Ins 302.05</p> <p>Replacing insurers:</p> <p>NH Code Admin. Ins 302.06</p> <p>Existing insurers:</p> <p>NH Code Admin. Ins 302.07</p> <p>Direct response:</p> <p>NH Code Admin. Ins 302.08</p> <p>Forms:</p> <p>NH Code Admin. Ins 302, Appendix A; Appendix B; and Appendix C</p>



State	Applicability and Exemptions	Key Elements/Citations
New Jersey	<p>Applies to life insurance.</p> <p>Exemptions:</p> <p>NJ Admin. Code §11:4-2.1</p> <p>Follows NAIC model but does not specifically apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy.</p> <p>[Note: Provisions previously set to expire in 2011 have been extended until 2018.]</p>	<p>Definitions:</p> <p>NJ Admin. Code §11:4-2.2</p> <p>Duties:</p> <p>Producers:</p> <p>NJ Admin. Code §11:4-2.3</p> <p>Insurers that use producers:</p> <p>NJ Admin. Code §11:4-2.5</p> <p>Replacing insurers:</p> <p>NJ Admin. Code §11:4-2.4</p> <p>Existing insurers:</p> <p>NJ Admin. Code §11:4-2.6</p> <p>Direct response:</p> <p>NJ Admin. Code §11:4-2.7</p> <p>Forms:</p> <p>NJ Admin. Code §11:4-2 Appendix A; Appendix B; and Appendix C</p> <p>(Also see NJ Bulletin 2005-02.)</p>

State	Applicability and Exemptions	Key Elements/Citations
New Mexico	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>NM Admin Code 13.9.6 (2)</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions:</p> <p>NM Admin Code 13.9.6 (7)</p> <p>Duties:</p> <p>Producers:</p> <p>NM Admin Code 13.9.6 (8)</p> <p>All insurers using producers:</p> <p>NM Admin Code 13.9.6 (9)</p> <p>Replacing insurers using producers:</p> <p>NM Admin Code 13.9.6 (10)</p> <p>Existing insurers:</p> <p>NM Admin Code 13.9.6 (11)</p> <p>Direct response:</p> <p>NM Admin Code 13.9.6 (12)</p> <p>Forms:</p> <p>NM Admin Code 13.9.6 (14) Appendix A;</p> <p>NM Admin Code 13.9.6 (15) Appendix B;</p> <p>NM Admin Code 13.9.6 (16) Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
New York	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>11 NYCRR 51.3</p> <ul style="list-style-type: none"> <li>The application for the new life insurance policy or new annuity contract is made to the same insurer that issued the existing life insurance policy or annuity contract and a contractual conversion privilege is being exercised</li> <li>A policy change customarily granted by the insurer is being exercised, provided such change results in no additional surrender or expense charge or suicide or contestable restrictions, and only to the extent such change is approved by the Superintendent of Insurance</li> <li>New coverage under certain group life policies or group annuities</li> <li>Individual life or individual annuity whose cost is borne wholly by the applicant's employer or by an association of which the applicant is a member</li> <li>Certain mass marketed individual life policies or individual annuity contracts</li> <li>The existing life insurance is a nonrenewable, nonconvertible term policy with five years or less to its expiration date</li> </ul>	<p>Definitions:</p> <p>11 NYCRR 51.2</p> <p>Duties:</p> <p>Producers:</p> <p>11 NYCRR 51.5</p> <p>All insurers:</p> <p>11 NYCRR 51.6 (a)</p> <p>Replacing insurers:</p> <p>11 NYCRR 51.6 (b)</p> <p>Existing insurers:</p> <p>11 NYCRR 51.6 (c)</p> <p>Forms:</p> <p>11 NYCRR 51.8, Appendix 10A (disclosure statement); Appendix 10B (annuity to annuity); Appendix 10C (notice); Appendix 11 (definition of replacement)</p>

State	Applicability and Exemptions	Key Elements/Citations
North Carolina	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>11 NCAC 12.0604</p> <p>Follows NAIC model</p>	<p>Definitions:</p> <p>11 NCAC 12.0602 (replacement)</p> <p>11 NCAC 12.0603 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>11 NCAC 12.0605</p> <p>Existing insurer:</p> <p>11 NCAC 12.0606</p> <p>Insurers using producers:</p> <p>11 NCAC 12.0607</p> <p>Replacing insurers using producers:</p> <p>11 NCAC 12.0612</p> <p>Direct response:</p> <p>11 NCAC 12.0608</p> <p>Forms:</p> <p>11 NCAC 12.0611 (NAIC replacement notice by reference)</p>
North Dakota		No applicable provisions.

State	Applicability and Exemptions	Key Elements/Citations
Ohio	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>OH Admin. Code §3901-6-05 (B)(2)</p> <p>Follows NAIC model</p>	<p>Definitions:</p> <p>OH Admin. Code §3901-6-05 (C)</p> <p>Duties:</p> <p>Producers:</p> <p>OH Admin. Code §3901-6-05 (D)</p> <p>Insurers using producers:</p> <p>OH Admin. Code §3901-6-05 (E)</p> <p>Replacing insurers using producers:</p> <p>OH Admin. Code §3901-6-05 (F)</p> <p>Existing insurer:</p> <p>OH Admin. Code §3901-6-05 (G)</p> <p>Direct response:</p> <p>OH Admin. Code §3901-6-05 (H)</p> <p>Forms:</p> <p>OH Admin. Code §3901-6-05 Appendix A; Appendix B; Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
Oklahoma	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>36 OK Stat. Ann. §4032</p> <ul style="list-style-type: none"><li>• Credit life</li><li>• Group life or group annuities</li><li>• Contracts issued in connection with employee benefits or welfare plans as defined by ERISA</li><li>• The exercise by an insured of an existing contractual right with the same insurer for the purchase of additional insurance under a guaranteed insurability provision or conversion option or any other contractual policy change privilege</li><li>• Short-term nonrenewable life insurance policies written to cover periods of 31 days or less</li><li>• An existing nonconvertible term life insurance policy which will expire in five years or less and which cannot be renewed</li><li>• Proposed life insurance policy that is to replace life insurance under a binding or conditional receipt issued by the same company issuing the policy which is to be replaced</li></ul>	<p>Definitions:</p> <p>36 OK Stat. Ann. §4033</p> <p>36 OK Stat. Ann. §4037</p> <p>Duties:</p> <p>Producers:</p> <p>36 OK Stat. Ann. §4034</p> <p>All insurers:</p> <p>36 OK Stat. Ann. §4034</p> <p>Existing insurers:</p> <p>36 OK Stat. Ann. §4034</p> <p>Forms:</p> <p>36 OK Stat. Ann. §4035 (notice)</p> <p>36 OK Stat. Ann. §4036 (applicant's statement)</p> <p>36 OK Stat. Ann. §4037 (definitions)</p>

State	Applicability and Exemptions	Key Elements/Citations
Oregon	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>OR Admin. R. 836-080-0001 (4) and (5)</p> <p>Follows NAIC model</p> <ul style="list-style-type: none"> <li>Does not include exemption for group life insurance and annuities used to fund prearranged funeral contracts.</li> </ul>	<p>Definitions:</p> <p>OR Admin. R. 836-080-0005</p> <p>Duties:</p> <p>Producers:</p> <p>OR Admin. R. 836-080-0014</p> <p>All insurers using producers:</p> <p>OR Admin. R. 836-080-0022</p> <p>Replacing insurers:</p> <p>OR Admin. R. 836-080-0029</p> <p>Existing insurers:</p> <p>OR Admin. R. 836-080-0034</p> <p>Direct response:</p> <p>OR Admin. R. 836-080-0039</p> <p>Forms:</p> <p>OR Admin. R. 836-080, Appendix A; Appendix B; and Appendix C (available through insurance agency)</p>

State	Applicability and Exemptions	Key Elements/Citations
Pennsylvania	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>31 PA Code §81.3</p> <ul style="list-style-type: none"> <li>Group life policies issued to creditors</li> <li>Credit life</li> <li>Group life or group annuities</li> <li>Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised</li> <li>Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li> <li>Registered contracts (exempt from some requirements with provisos)</li> </ul>	<p>Definitions:</p> <p>31 PA Code §81.2</p> <p>Duties:</p> <p>Producers:</p> <p>31 PA Code §81.4</p> <p>All insurers:</p> <p>40 PA Cons. Stat. Ann. §625-9;</p> <p>31 PA Code §81.5</p> <p>All insurers using producers:</p> <p>31 PA Code §81.6</p> <p>Direct response:</p> <p>31 PA Code §81.7</p> <p>Forms:</p> <p>31 PA Code Chapter 81, Appendix A and Appendix B</p>
Puerto Rico		<p>Forms:</p> <p>PR ADC INS Rule XLII</p>

State	Applicability and Exemptions	Key Elements/Citations
Rhode Island	Applies to life insurance.  Exemptions: RI ADC 11-5-29:2  Follows NAIC model	Definitions: RI ADC 11-5-29:3 Duties: Producers: RI ADC 11-5-29:4 All insurers using producers: RI ADC 11-5-29:5 Replacing insurers: RI ADC 11-5-29:6 Existing insurers: RI ADC 11-5-29:7 Direct response: RI ADC 11-5-29:8 Forms: RI ADC 11-5-29 Appendix A RI ADC 11-5-29 Appendix B RI ADC 11-5-29 Appendix C

State	Applicability and Exemptions	Key Elements/Citations
South Carolina	Applies to life insurance and annuities.  Exemptions: SC Code of Regulations R. 69-12.1, Section 1  Follows NAIC Model	Definitions: SC Code of Regulations R. 69-12.1, Section 2 Duties: Producers: SC Code of Regulations R. 69-12.1, Section 3 All insurers using producers: SC Code of Regulations R. 69-12.1, Section 4 Replacing insurers: SC Code of Regulations R. 69-12.1, Section 5 Existing insurers: SC Code of Regulations R. 69-12.1, Section 6 Direct response: SC Code of Regulations R. 69-12.1, Section 7 Forms: SC Code of Regulations R. 69-12.1, Appendix A; Appendix B; and Appendix C

State	Applicability and Exemptions	Key Elements/Citations
South Dakota	<p>Applies to life insurance and annuities.</p> <p>Exemptions: <b>SD Admin. 20:06:08:49</b> <b>SD Admin. 20:06:08:40 Repealed. Effective January 1, 2013.</b></p> <p><b>Follows NAIC Model</b></p>	<p>Definitions: <b>SD Admin. 20:06:08:38</b></p> <p>Duties: Producers: <b>SD Admin. 20:06:08:50</b> <b>SD Admin. 20:06:08:39 Repealed. Effective January 1, 2013.</b></p> <p><b>All insurers using producers:</b> <b>SD Admin. 20:06:08:54 (supervision and control)</b> <b>SD Admin. 20:06:08:55 (record keeping)</b> <b>SD Admin. 20:06:08:56 (signed statement)</b> <b>SD Admin. 20:06:08:57 (required documents)</b> <b>SD Admin. 20:06:08:58 (insurer notifications)</b> <b>SD Admin. 20:06:08:59 (record format)</b></p> <p>Replacing insurers: <b>SD Admin. 20:06:08:39 Repealed. Effective January 1, 2013.</b></p> <p><b>Replacing insurers using producers:</b> <b>SD Admin. 20:06:08:60</b> <b>SD Admin. 20:06:08:61</b></p> <p>Existing insurers: <b>SD Admin. 20:06:08:62</b></p> <p>Direct response: <b>SD Admin. 20:06:08:63</b></p> <p>Forms: <b>SD Admin. 20:06:08, Appendix D, Appendix E and Appendix F</b> <b>SD Admin. 20:06:08:41 Repealed. Effective January 1, 2013.</b></p>

State	Applicability and Exemptions	Key Elements/Citations
Tennessee	<p>Applies to life insurance and annuities.</p> <p>Exemptions: TN Comp. R. &amp; Regs. 0780-01-24-.04</p> <ul style="list-style-type: none"><li>• Credit life</li><li>• Group life insurance</li><li>• Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised</li><li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li><li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li><li>• Registered contracts (exempt from some requirements with provisos)</li></ul>	<p>Definitions: TN Comp. R. &amp; Regs. 0780-01-24-.02 (replacement); TN Comp. R. &amp; Regs. 0780-01-24-.03 (other)</p> <p>Duties: Producers: TN Comp. R. &amp; Regs. 0780-01-24-.05</p> <p>All insurers: TN Comp. R. &amp; Regs. 0780-01-24-.06</p> <p>All insurers using producers: TN Comp. R. &amp; Regs. 0780-01-24-.07</p> <p>Direct response: TN Comp. R. &amp; Regs. 0780-01-24-.08</p> <p>Forms: TN Comp. R. &amp; Regs. 0780-01-24-.12, Exhibit A</p>

State	Applicability and Exemptions	Key Elements/Citations
Texas	Applies to life insurance and annuities.  Exemptions: TX Ins. Code Ann. §1114.004  Follows NAIC model	Definitions: TX Ins. Code Ann. §1114.002 (general) TX Ins. Code Ann. §1114.003 (policy summary) 28 TX Admin. Code §3.9502 (agent and producer) Duties: Producers: TX Ins. Code Ann. §1114.051 All insurers using producers: TX Ins. Code Ann. §1114.052 Replacing insurers that use producers: TX Ins. Code Ann. §1114.053 28 TX Admin. Code §3.9504 Existing insurers: TX Ins. Code Ann. §1114.054 Direct response: TX Ins. Code Ann. §1114.055 Forms: TX Ins. Code Ann. §1114.006 28 TX Admin. Code §3.9503 (format) 28 TX Admin. Code §3.9504 (replacement) 28 TX Admin. Code §3.9505 (direct response) 28 TX Admin. Code §3.9506 (substantially similar notices)

State	Applicability and Exemptions	Key Elements/Citations
Utah	Applies to life insurance and annuities.  Exemptions: UT Admin. Code R590-93 section 2  Follows NAIC model	Definitions: UT Admin. Code R590-93 section 3 Duties: Producers: UT Admin. Code R590-93 section 4 All insurers using producers: UT Admin. Code R590-93 section 5 Replacing insurers that use producers: UT Admin. Code R590-93 section 6 Existing insurers: UT Admin. Code R590-93 section 7 Direct response: UT Admin. Code R590-93 section 8 Forms: UT Admin. Code R590-93 section 3, Appendix A; Appendix B; and Appendix C adopted by reference.



State	Applicability and Exemptions	Key Elements/Citations
Vermont	<p>Applies to life insurance and annuities.</p> <p>Exemptions: VT Admin. Code 4-3-43:1 (B)</p> <p>Follows NAIC model but does not include exemption for term conversion privilege exercised among corporate affiliates.</p>	<p>Definitions: VT Admin. Code 4-3-43:2</p> <p>Duties:</p> <p>Producers: VT Admin. Code 4-3-43:3</p> <p>All insurers using producers: VT Admin. Code 4-3-43:4</p> <p>Replacing insurers: VT Admin. Code 4-3-43:5</p> <p>Existing insurers: VT Admin. Code 4-3-43:6</p> <p>Direct response: VT Admin. Code 4-3-43:7</p> <p>Forms: VT Admin. Code 4-3-43: Appendix A and Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
Virginia	<p>Applies to life insurance and annuities used to replace existing life insurance.</p> <p>Exemptions: 14 VA Admin. Code 5-30-30</p> <p>Follows NAIC model</p>	<p>Definitions: 14 VA Admin. Code 5-30-20</p> <p>Duties:</p> <p>Producers: 14 VA Admin. Code 5-30-40</p> <p>All insurers using producers: 14 VA Admin. Code 5-30-60</p> <p>Replacing insurers: 14 VA Admin. Code 5-30-51</p> <p>Existing insurers: 14 VA Admin. Code 5-30-55</p> <p>Direct response: 14 VA Admin. Code 5-30-70</p> <p>Forms: 14 VA Admin. Code 5-30, Form 30-A; Form 30-B, Notice Regarding Replacement; and Form 30-C, Important Notice: Replacement of Life Insurance or Annuities (direct response)</p>

State	Applicability and Exemptions	Key Elements/Citations
Washington	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>WA Admin. Code §284-23-430</p> <ul style="list-style-type: none"><li>• Credit life</li><li>• Certain group life or group annuities</li><li>• Application to the existing insurer that issued the existing life insurance when a contractual change or conversion privilege is being exercised</li><li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li><li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li><li>• Registered contracts (exempt from some requirements with provisos)</li></ul>	<p>Definitions:</p> <p>WA Admin. Code §284-23-410 (replacement);</p> <p>WA Admin. Code §284-23-420 (other)</p> <p>Duties:</p> <p>Producers:</p> <p>WA Admin. Code §284-23-440</p> <p>All insurers:</p> <p>WA Admin. Code §284-23-450</p> <p>All insurers using producers:</p> <p>WA Admin. Code §284-23-455</p> <p>Direct response:</p> <p>WA Admin. Code §284-23-460</p> <p>Forms:</p> <p>WA Admin. Code §284-23-485</p>

State	Applicability and Exemptions	Key Elements/Citations
West Virginia	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>WV Code 33-11-5a (c)</p> <p>WV Code St. R. 114-8-3</p> <p>Follows NAIC model</p>	<p>Definitions:</p> <p>WV Code 33-11-5a (a);</p> <p>WV Code St. R. 114-8-2</p> <p>Duties:</p> <p>Producers:</p> <p>WV Code St. R. 114-8-4</p> <p>All insurers using producers:</p> <p>WV Code St. R. 114-8-5</p> <p>Replacing insurers:</p> <p>WV Code 33-11-5a (b);</p> <p>WV Code St. R. 114-8-6</p> <p>Existing insurers:</p> <p>WV Code St. R. 114-8-7</p> <p>Direct response:</p> <p>WV Code St. R. 114-8-8</p> <p>Forms:</p> <p>WV Code St. R. 114-8 Appendix A; Appendix B; and Appendix C</p>

State	Applicability and Exemptions	Key Elements/Citations
Wisconsin	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>WI ADC Ins 2.07 (2)</p> <p>Follows NAIC model</p>	<p>Definitions:</p> <p>WI ADC Ins 2.07 (3)</p> <p>Duties:</p> <p>Producers:</p> <p>WI ADC Ins 2.07 (4)</p> <p>All insurers using producers:</p> <p>WI ADC Ins 2.07 (5)</p> <p>Replacing insurers:</p> <p>WI ADC Ins 2.07 (6)</p> <p>Existing insurers:</p> <p>WI ADC Ins 2.07 (7)</p> <p>Direct response:</p> <p>WI ADC Ins 2.07 (8)</p> <p>Forms:</p> <p>WI ADC Ins 2.07, Appendix I; Appendix II (direct response); and Appendix III (definitions)</p>

State	Applicability and Exemptions	Key Elements/Citations
Wyoming	<p>Applies to life insurance and annuities.</p> <p>Exemptions:</p> <p>WY Admin. Code Ins Gen Ch 12 §4</p> <ul style="list-style-type: none"> <li>• Credit life</li> <li>• Group life or group annuities</li> <li>• Application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised</li> <li>• Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company</li> <li>• Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control with provisos</li> </ul>	<p>Definitions:</p> <p><b>WY Admin. Code Ins Gen Ch 12 §3</b></p> <p>Duties:</p> <p>Producers:</p> <p><b>WY Admin. Code Ins Gen Ch 12 §5</b></p> <p>All insurers:</p> <p>WY Admin. Code Ins Gen Ch 12 §6</p> <p>All insurers using producers:</p> <p><b>WY Admin. Code Ins Gen Ch 12 §7</b></p> <p>Direct response:</p> <p><b>WY Admin. Code Ins Gen Ch 12 §8</b></p> <p>Forms:</p> <p><b>WY Admin. Code Ins Gen Ch 12 §11</b>, Replacement Form</p> <p><b>WY Memorandum 02-2013</b></p>

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## **ACLI Disclosure Initiative for Fixed, Index and Variable Annuities: Constructive Change on the Horizon**

Carl B. Wilkerson, Vice President & Chief Counsel-Securities & Litigation American  
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### **I. Background and Summary**

A. Over the past several years, regulators, the press, and consumers have regularly observed that useful information about different annuities and sales practices needed improvement to facilitate informed decision-making and suitable matches of customer needs with products.

B. In January 2005, ACLI's Board of Directors took steps to enhance annuity disclosure and improve fixed, index, and variable annuity sales practices.

1. ACLI formed a CEO-level task force to develop recommendations addressing criticism that annuities are misunderstood by consumers. The Task Force emphasized increased attention to suitability, and prioritized enhanced consumer decision-making through improved disclosure with short, plain-English information.

2. To elevate consistently suitable annuity sales practices, ACLI strongly recommended expanding the Senior Protection in Annuity Transactions Model Regulation to all ages, rather than limiting it to age 65 and over.

- a) The NAIC adopted ACLI's recommended enlargement to all ages in June 2006, renaming it the Suitability in Annuity Transactions Model Regulation. ACLI has actively advocated uniform adoption of this model suitability regulation in the states.

- b) A chart accompanying this outline compiles the status of the NAIC Suitability in Annuity Transactions Model Regulation together with the status of the NAIC Annuity Disclosure Model Regulation in the states.

3. To constructively improve disclosure, ACLI actively advocated adoption of the NAIC Annuity Disclosure Model Regulation throughout the states. Although developed in 1995, it had not been widely adopted.

- a) The disclosure model establishes an informational core of improved understanding about annuities.

- b) Life insurers in the fixed, index and variable annuity markets emphasized design of short, simple, and comparable disclosure as an essential priority to meaningfully help consumers in purchase decisions.

C. The industry group developed a set of “templates” for presenting required disclosure information in a simplified plain-English presentation of information essential to an informed purchase decision.

1. The disclosure templates for fixed and index annuities implement standards mandated by the NAIC Annuity Disclosure Model Regulation.
2. The template for variable annuities parallels the approach of the mutual fund Profile Plus and would be followed by a full prospectus.

D. The industry group produced sample documents under the three templates based on actual fixed, variable and index annuities.

1. The samples were tested in a series of focus groups with retirees, consumers in the baby boomer age group, and annuity salespersons.
2. The various focus groups expressed constructive and positive reactions. The sample documents were revised to reflect focus group feedback and then retested again with the groups.

E. ACLI regularly shared the templates with the SEC, FINRA, and state insurance regulators as the designs evolved.

## **II. Ingredients of the Disclosure Template Project**

- A. General guidelines on how to write readable disclosure materials;
- B. Instructions on how to complete a disclosure template;
- C. Templates for fixed, index, and variable annuity disclosures;
- D. Instructions and a template for depicting indexed interest crediting strategies; and,
- E. A sample of what an actual disclosure might look like for each product.
- F. The ACLI Disclosure Templates and Guides are attached at the back of this outline

## **III. The Guidelines to Readable Disclosure in ACLI’s Disclosure Initiative**

- A. The purpose and scope of ACLI’s readable disclosure guidelines directly parallel the SEC’s goals and structure in plain-English Rule 421(d) under the Securities Act of 1933.
  1. Under the SEC’s plain-English rule, issuers must use plain-English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors section in filings with the SEC’s Division of Corporation Finance under the 1933 Act. When drafting the language for selected parts of the prospectus, issuers must comply with a series of specified plain-English principles.

- a) See “Plain-English Disclosure,” the updated SEC Staff Bulletin No 7 at <http://www.sec.gov/interps/legal/cfslb7a.htm>.
- b) See also the SEC’s “Plain-English Handbook” at <http://www.sec.gov/news/extra/handbook.htm> .
- c) The rule and handbook extol clear, simplified narrative in disclosure, using basic rules of grammar and composition.

#### B. ACLI’s Guideline to Readable Disclosure

1. The guideline outlines rules for writing more readable disclosures, and relied on parallel government endeavors as an important resource which is found at <http://www.plainlanguage.gov>.

- a) Like the SEC Handbook, the ACLI guidelines emphasize clear, simplified disclosure, using basic rules of grammar and composition.

- b) The guide instructs and encourages drafters to, among other things:

- (1) Write for the average reader;
- (2) Organize to meet the needs of the reader;
- (3) Include only the information your reader needs;
- (4) Use headings and make the headings useful
- (5) Use short sentences and short sections; and,
- (6) Use lists and tables to simplify information.

2. The structure of the guideline’s follows the organization of the online presentation, “Writing in Plain Language on the TriCare Site” at <http://www.tricare.osd.mil/webmaster/Plain-Language-Rules-Web-Toolkit-2005-07-27.ppt> .

3. Brenda J. Cude, Ph.D., Professor of Housing and Consumer Economics, at the University of Georgia developed the guidelines for ACLI. In her work, Dr. Cude focuses specifically on consumer protection and behavior, including how consumers acquire and use information before making buying decisions.

- a) She represents the consumer perspective in policy discussions at national meetings of insurance regulators.

#### **IV. Reactions from Regulators to the Summary Disclosure Initiative**

##### **A. State Regulators**

###### **1. Individual States**

- a) Several states, such as Iowa and Minnesota have encourage life insurers to voluntarily use the disclosure templates as a means of fulfilling the state's Annuity Disclosure Regulation.
- b) Under these arrangements, use of the template in the pilot program would be in lieu of, and not in addition to, disclosure otherwise required in the Annuity Disclosure Regulation.

###### **2. Federal Regulators**

- a) ACLI has kept the SEC and FINRA fully informed about ACLI's summary disclosure initiative.
- b) SEC disclosure review staff in the Division of Investment Management have provided constructive feedback on the disclosure templates and instructions.

#### **V. ACLI's Summary Disclosure Initiative and Associated Templates**

- A. These materials appear in Wilkerson, *ACLI Disclosure Initiative for Fixed, Indexed, and Variable Annuities: Constructive Change on the Horizon* in the [ALI-ABA Conference](#) on Life Insurance Company Products Current SEC, FINRA, Insurance, Tax, and ERISA Regulatory and Compliance Issues (Nov. 8-9, 2007) at 217.

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## **NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities**

Carl B. Wilkerson, Vice President & Chief Counsel-Securities & Litigation American Council of Life Insurers © 2013 All Rights Reserved.

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### **I. NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.**

- A. This NAIC regulation directly parallels the North American Securities Administrators Association (NASAA) credentialing regulations and was developed in close coordination with NASAA and supported by NASAA.
- B. See [http://www.nasaa.org/content/Files/Senior\\_Model\\_Rule110807.pdf](http://www.nasaa.org/content/Files/Senior_Model_Rule110807.pdf)
- C. The NAIC regulation and an accompanying bulleting can be obtained on the NAIC website at [http://www.naic.org/Releases/2008\\_docs/senior\\_sales.htm](http://www.naic.org/Releases/2008_docs/senior_sales.htm) .

### **II. Purpose of the NAIC Regulation**

- A. The regulation establishes standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product.
- B. The regulation will apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by an “insurance producer,” that is defined as a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance, including annuities.

### **III. Prohibited Uses of Senior-Specific Certifications and Professional Designations [Section 5]**

- A. Under the regulation, it will be an unfair and deceptive act or practice in the business of insurance within the meaning of the Unfair Trade Practices Act for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

B. The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

1. Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;
2. Use of a nonexistent or self-conferred certification or professional designation;
3. Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and
4. Use of a certification or professional designation that was obtained from a certifying or designating organization that:
  - a) Is primarily engaged in the business of instruction in sales or marketing;
  - b) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
  - c) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
  - d) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.
5. Under the regulation, there is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subsection A(2)(d) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:
  - a) The American National Standards Institute (ANSI);
  - b) The National Commission for Certifying Agencies; or
  - c) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."
6. In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or

professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

- a) Use of one or more words such as “senior,” “retirement,” “elder,” or like words combined with one or more words such as “certified,” “registered,” “chartered,” “advisor,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification or professional designation; and
- b) The manner in which those words are combined.

7. For purposes of this NAIC regulation, a job title within an organization that is licensed or registered by a State or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

- a) Indicates seniority or standing within the organization; or
- b) Specifies an individual’s area of specialization within the organization.

8. Under this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

**IV. State-by-State Index** to the NAIC Senior-Specific Certifications Model Regulation appears on page 10 following the outline on the NAIC Suitability in Annuity Transactions Model Regulation.

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**The Impact of State Insurance Consulting Laws and Related Provisions on  
Insurance Producers Performing Financial Planning Services**

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**I. The Impact of State Insurance Consulting Laws and Related Provisions on  
Insurance Producers Performing Financial Planning Services**

**A. Background**

1. A degree of variability exists in state insurance statutes and regulations concerning financial planning by life insurance agents.
2. Careful review of the various state laws and regulations is valuable in confirming proper procedures and activities.

**B. NAIC Unfair Trade Practices Act provisions governing financial planning:**

1. §2(M) of the NAIC Unfair Trade Practices Act defines an unfair financial planning practice by an insurance producer to be:
  - a) Holding himself or herself out directly or indirectly to the public as they "financial planner," "investment advisor," "consulted," "financial counselor," or any other specialists engaged in the business of giving financial planning for advice relating to investments, insurance, real estate tax matters or trust and estate matters when such person is in fact engaged only in the sale of policies.
  - b) Engaging in the business of financial planning without disclosing to the client prior to the execution of the agreement provided for in paragraph 3 [of this regulation], or solicitation of the sale of a product or service that:
    - (1) He or she is also an insurance salesperson, and
    - (2) That a commission for the sale of the insurance products will be received in addition to a fee for financial planning, if such is the case.

- c) This NAIC provision forbids these other than commission for financial planning by insurance producers, unless such fees are based upon a written agreement, signed by the client in advance; a copy of the agreement must be given to the client at the time it is signed.

### C. Insurance Consulting Laws

1. Many states have adopted statutes or regulations generally referred to as "insurance consulting" provisions that seek to protect insurance product policyholders by preventing the receipt of insurance commissions and insurance consulting fees concerning the same sale.

2. It is unlikely that this body of law was intended to govern broad-spectrum of financial planning conducted by insurance agents in today's market. Nonetheless, financial planning and investment advisory activities could inadvertently trigger the scope and terms of the insurance consulting laws.

- a) Insurance consulting laws evolved to address problems of a traditional life insurance environment, not more recent developments such as financial planning more investment advice.

- b) While the application of the insurance consulting laws to financial planning is not clear, potential coverage could be triggered in two ways:

- (1) Fee and commission financial planning arrangements that also involve a recommendation and ultimate purchase of insurance product;

- (2) Commission only financial planning arrangements that involve the recommendation and ultimate purchase of an insurance product.

- c) Insurance consulting laws generally fall into two categories:

- (1) States prohibiting insurance agents from receiving both consulting fees and sales commissions in connection with the same assurance product sale.

- (a) See, e.g., Connecticut Insurance Code §38 – 92h (an individual serving as a quote certified insurance consultant" is prohibited from receiving both sales commission and a consultant's commission in connection with the sale of insurance).

- (2) States permitting insurance agents to obtain both consulting fees and sales commissions in connection with the same insurance product sale, providing clear

disclosure about the joint receipt of a fee and commission is communicated.

(a) See, e.g., Arkansas Insurance Department Bulletin No. 1185 (May 10, 1985): "the obvious intent of this section [§66 -- 3023 (3)] is to permit genuine utilization of the [property/casualty and life/disability] agent's expertise, for compensation, but to require proper disclosure to the client and to prevent price gouging by unscrupulous persons."

(b) See also, New Mexico Insurance Rule 80-3-6 (c) which states that "terms such as financial planner, investment advice or, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually the case.

(3) A compilation of state laws and regulations about insurance consulting laws and investment advisor provisions is set forth below.

d) A law survey on insurance consulting laws in each of the states follows this segment of the outline.

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## ACLI LAW SURVEY

### State Insurance Consulting Laws and the Status of Investment Advisers Under State Securities Codes

This ACLI *Law Survey* provides guidance on two categories of investment adviser regulation under state law. The first identifies and cites the definition of investment adviser under each jurisdiction's securities code. State Securities Codes follow one of three versions of the Uniform Securities Act (USA) administered by the National Conference of Commissioner on Uniform State Laws (NCCUSL) that were adopted in 1956, 1985, or 2002. The specific definition of investment adviser under each of the three USA versions is duplicated below for reference. By way of background, Congress bifurcated the regulation of investment advisers in 1996 between state and federal securities administrators when it enacted the National Securities Markets Improvements Act (NSMIA), which was designed, in part, to eliminate duplicate state and federal regulation over investment advisers. Under NSMIA, investment advisers with less than \$25M in assets under management are subject to state securities jurisdiction. The SEC regulates investment advisers with more than \$25M in assets under management.

The second part of this ACLI *Law Survey* identifies and cites "insurance consulting" laws under state insurance codes. Some states prohibit the receipt of both an insurance commission and an insurance consulting fee for the same transaction. Other states permit insurance consulting fees together with commissions if certain conditions are fulfilled, such as written disclosure about the services and compensation. Other states limit or condition the use of terminology by insurance agents, such as financial planner, investment adviser, financial consultant or financial counselor. This second part of the survey of state insurance laws provides an added resource to research on the status of investment advisers under state securities laws.

February 2013

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ACLI Law Survey

Investment Advisers & Insurance Consultants (28)

State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Alabama	AL Code §8-6-2 (18)	Definition: 2002. Exceptions: 2002 or similar plus insurer, employee or agent engaged exclusively in sale or distribution of insurance products.	AL Code §27-12-17  AL Admin. Code 482-1-131-.07	No person shall willfully collect as premium or charge for insurance any sum in excess of the premium or charge applicable to the insurance and as specified in the policy in accordance with the applicable classifications and rates as filed with, and approved by, the commissioner or, in cases where classifications, premiums, or rates are not required by this title to be so filed and approved, the premiums and charges shall not be in excess of those specified in the policy and as fixed by the insurer.  An insurance producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case. Provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.
Alaska	AK Stat. §45.55.990 (34)	Definition: similar to 2002 with addition of person who engages in business of managing an investment or trading account in securities for other persons. Exceptions: similar to 2002 with additional exemption.	AK Stat. §21.36.500	Commission for the sale of an insurance product in addition to a fee for financial planning is not permissible without full disclosure to the client before the execution of required written agreement.
Arizona	AZ Rev. Stat. Ann. §44-3101 (5)	Definition: 2002. Exceptions: deviations from all models, including exception for certain insurers or producers.	AZ Rev. Stat. Ann. §20-465  AZ Admin. Code R20-6-209 (D)(3)	Insurer and insurance producer may charge and receive a fee for services not customarily provided in the transaction of insurance if the fee is filed with the director and certain conditions exist, including written disclosure.  An insurer or producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless that is true.

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State	Investment Advisers Definition & Exceptions		Restrictions on Consulting Fees and Insurance Commissions	
	Citation	Uniform Securities Act Version	Citation	Comments
Arkansas	AR Code Ann. §23-42-102 (8)	Definition: 1956. Exceptions: 1956 without exception (5) of Act.	AR Code Ann. §23-66-310  AR Code Ann. §23-66-206  AR ADC INS 17 §7C	Any fee charged by a licensed insurance agent or producer for services which are not customarily associated with the solicitation, negotiation, or servicing of an insurance policy or contract are not prohibited if certain conditions exist, including disclosure and written agreement.  Prohibits an insurance producer from engaging in the business of financial planning without disclosing in writing to the client, prior to the execution of a written agreement or solicitation of the sale of a product or service, that he or she is also an insurance salesperson and a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if the sale involves a commission.  Prohibits the use of terms such as financial planner, investment adviser, financial consultant, or financial counselor to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless actually the case.
California	CA Corp. Code §25009 and CA Corp. Code §25009.1	Definition: Similar to 2002. Exceptions: 2002 without exception (E) of Act.	CA Ins. Code §1848	Insurance analysts shall not charge a fee for any service which is customarily associated with the solicitation of insurance sales or the servicing of insurance contracts written by the licensee or contracts for which the licensee is receiving compensation from the insurer. Analyst cannot charge fee unless based on written agreement. For analysts also licensed as producers, written statement shall indicate so and, as such, receives commissions.
Colorado	CO Rev. Stat. Ann. §11-51-201 (9.5)	Definition: 2002. Exceptions: 2002 with deviations, including additional exceptions.	3 CO ADC INS 1-2-9	Insurance producers may charge fees for services such as financial planning for which a commission is not received from insurer. Fees may be charged under certain circumstances, including a signed disclosure.

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Connecticut	CT Gen. Stat. Ann. §36b-3 (11)	Definition: 1956. Exceptions: 1956 with deviations, including exception for insurers.	CT Gen. Stat. Ann. §38a-707  CT Gen. Stat. Ann. §38a-734  CT ADC § 38a-819-37 (C)	Producers may not receive compensation other than commissions unless written disclosure is provided and signed.  Certified consultants receiving fees from person served are prohibited from receiving payments from insurers or producers for sale of insurance. Not applicable to insurance producer who is an advisory representative of a registered investment adviser, if written disclosure is provided and signed.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Delaware	DE Code Ann. tit. 6 §73-103 (a)(8) [formerly DE Code Ann. tit. 6, §7302]	Definition: 2002. Exceptions: Similar to 2002, without exception (G) of Act.	DE Code Ann. tit. 18 §1714 (e) and DE Admin. Code 18 500 502 sec. 2.3  DE Admin. Code 18 1200 1203 (6.3)	Both consulting (planning) fees and insurance sales commissions prohibited.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
District of Columbia	DC Code Ann. §31-5601.01 (17)	Definition: similar to 2002. Exceptions: 2002 with deviations, including additional exceptions for insurance producers and others.	None applicable.	
Florida	FL Stat. Ann. §517.021 (13)	Definition: similar to 1956. Exceptions: Elements of 1956 and 2002 with additional exceptions.	FL Stat. Ann. §626.99 (5)(c)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.



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Georgia	GA Code Ann. §10-5-2 (17)	Definition: 2002. Exceptions: 2002.	GA Code Ann. §33-23-46  GA Comp. R. & Regs. 120-2-31-.06 (3)	Neither an insurance producer licensed as counselor nor any affiliate receiving any compensation from customer shall accept any compensation from an insurer or other third party for placement of insurance unless the producer has, prior to the customer's purchase of insurance, received documented acknowledgement of the compensation and has disclosed the amount or method for determining the amount. An insurance producer who is not licensed as a counselor may not receive any compensation from the customer for placement of insurance.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Hawaii	HI Rev. Stat. Ann. §485A-102	Definition: 2002. Exceptions: 2002.	None applicable.	
Idaho	ID Code §30-14-102 (15)	Definition: 2002. Exceptions: 2002.	ID Code §41-1030  ID Admin. Code 18.01.52.011	Before charging a fee to a consumer, a retail producer shall provide a written statement that describes the services the producer will perform and the fees the producer will receive.

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Illinois	815 ILCS 5/2.11	Definition: 2002. Exceptions: 2002 with deviations.	215 ILCS 5/500-80  IL Admin. Code tit. 50 §930.70 (c)	Insurance producer or business entity may charge fees separate from insurance commissions under certain conditions, including providing written disclosure of fee prior to delivery of policy. If combined compensation or fee exceeds 10% of a directly attributable premium amount of a corresponding contract or policy, the disclosure must also include the signature of the consumer or contracting party acknowledging the compensation.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Indiana	IN Code Ann. §23-19-1-2 (15)	Definition: 2002. Exceptions: 2002.	ID Code Ann. §27-1-15.6-22 ID Code Ann. §27-1-15.6-23 (c)  760 ID Admin. Code 1-24-6 (C)	Insurance producer may not receive compensation for the sale, solicitation, negotiation, or renewal of any insurance policy issued to any person or entity for whom the insurance producer, for a fee, acts as a consultant for that policy without written agreement and disclosure of compensation for sale of policy.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Iowa	IA Code Ann. §502.102 (15)	Definition: 2002. Exceptions: 2002.	None applicable.	
Kansas	KS Stat. Ann. §17-12a102 (15)	Definition: 2002. Exceptions: 2002.	None applicable.	

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Kentucky	KY Rev. Stat. Ann. §292.310 (11)	Definition: 1956. Exceptions: 1956 with deviations and elements of 2002.	KY Rev. Stat. Ann. §304.9-350	Consultant licensed as an agent cannot receive both a fee and other compensation paid from an insured or any insurer with respect to any insurance or annuity contract procured, renewed, continued, modified, terminated, or otherwise disposed of as result of any recommendation given or transaction engaged in by licensee. If consultant receives fee from insured with respect to insurance transaction or contract, it's presumed that licensee was acting as a consultant. Prior written contracts are required when consultants receive fees from insureds in certain circumstances.
Louisiana	LA Rev. Stat. Ann. §51:702 (7)	Definition: 1956. Exceptions: 1956.	LA Rev. Stat. Ann. §22:1964 (19)	Insurance producer shall not engage in the business of financial planning without disclosing prior to the execution of an agreement or solicitation of the sale of a product or service that he is also an insurance salesperson and that a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case. Producer shall not charge fees other than commissions for financial planning, unless such fees are based upon a written agreement, signed by the party to be charged in advance of the performance of the services under the agreement.
Maine	ME Rev. Stat. Ann. tit. 32 §16102 (15)	Definition: 2002. Exceptions: 2002.	ME Rev. Stat. Ann. tit 24-a §1466  Code Me. R. 02-031 Ch. 240 §6 (C)	Life and health consultant may charge a consulting fee and receive commissions for the sale of insurance as an insurance producer if both the consulting fee and the insurance commissions are provided for in a written agreement, in a form approved by the superintendent, signed by the client and the consultant.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

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Maryland	MD Code Corporations and Associations §11-101 (h)	Definition: similar to 2002. Exceptions: 2002 with deviations, including exception for insurance producer.	MD Code Ann. Insurance §10-208  MD Regs. Code 31.15.03.07	An insurance adviser license does not authorize the licensee to receive compensation from an insurer or insurance producer for the sale or placement of insurance.  The terms financial planner, investment adviser, financial consultant, financial analyst, financial counsellor, and other similar terms may not be used by the producer in the name of the producer's agency, in letterheads, logos, or in advertising or solicitation material, or in any sales presentation soliciting insurance in such a way to imply that the agent's compensation is unrelated to insurance sales, unless this is actually the case. This provision does not preclude individuals who hold a formal recognized financial planning or consultant designation from using this designation even when they are selling insurance.  An insurance producer may not charge an additional fee for services that are customarily associated with the solicitation, negotiation, or servicing of policies.
Massachusetts	MA Gen. Laws Ann. ch. 110A §401 (m)	Definition: 2002. Exceptions: elements of 2002 and 1956.	211 CMR 31.07 (3)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.
Michigan	MI Comp. Laws Ann. §451.2102a (e)	Definition: 2002 Exceptions: 2002 with additional exception.	MI Comp. Laws Ann. §500.1236	Counselor may receive a commission from the insurer on any insurance placed by the counselor acting as insurance agent if written agreement with certain disclosures is signed by client and counselor in advance of rendering service.

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Minnesota	MN Stat. Ann. §80A.41 (16)	Definition: 2002. Exceptions: 2002.	MN Stat. Ann. §60K.46 (Subd. 2)	Insurance producers shall not charge a fee for any services rendered in connection with the solicitation, negotiation, or servicing of any insurance contract unless before rendering the services, a written statement is provided with certain disclosures.
Mississippi	MS Code Ann. §75-71-102 (15)	Definition: 2002 Exceptions: 2002	None applicable.	
Missouri	MO Ann. Stat. §409.1-102 (15)	Definition: 2002. Exceptions: 2002.	MO Ann. Stat. §375.116  MO Ann. Stat. §376.708 (3)	No insurance producer shall have right to compensation other than commissions unless the right to compensation is based upon a written agreement between the insurance producer and the insured specifying or clearly defining the amount or extent of the compensation.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Montana	MT Code Ann. §30-10-103 (11)	Definition: 2002. Exceptions: elements of 2002 and 1985 with exception for insurance company.	MT Code Ann. §33-17-512  MT Admin. R. 6.6.205 (3)	Licensed insurance consultant may not receive a commission, service fee, brokerage fee, or other valuable consideration for the sale or service of a line of insurance, annuity, security, or pension trust if the consultant has received compensation from the client for consulting services on the same line of insurance, annuity, security, or pension trust sold or serviced within the preceding 12 months.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

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Nebraska	NE Rev. Stat. Ann. §8-1101 (7)	Definition: 2002. Exceptions: similar to 2002 with elements of 1956 and additional exception.	NE Rev. Stat. Ann. §44-2631  210 NE ADC Ch. 33 §007 .03	Insurance consultant may not receive any part of any commission or compensation paid by an insurer or agent in connection with the sale or writing of any insurance which is within the subject matter of any consulting service performed prior to the sale of insurance and for which consultant has contracted to receive a fee.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Nevada	NV Rev. Stat. Ann. §90.250	Definition: 1985. Exceptions: 1985.	NV Admin. Code 686A.330 (3)  NV Admin. Code 686A.425 (3)	Financial planner, life or health insurance agent or broker, or insurance consultant shall not charge a fee except with respect to group life or group annuity, and group health products.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling may not be used in a way which implies that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless that is actually the case.
New Hampshire	NH Rev. Stat. Ann. §421-B:2 (IX)	Definition: 2002. Exceptions: Elements of 2002 and 1956 with exception for person transacting insurance.	NH Rev. Stat. Ann. §405:44-f  NH Code Admin. R. Ins 301.06 (c)	Insurance consultant shall provide to prospective clients a written disclosure statement with certain information including whether there are any sales fees and commissions which the insurance consultant may receive for recommending particular insurance products to clients.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

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New Jersey	NJ Stat. Ann. §49:3-49 (g)	Definition: 2002. Exceptions: elements of 2002 and 1956 with deviations.	NJ Admin. Code §11:17B-3.1  NJ Admin. Code §11:17B-3.2  NJ Admin. Code §11:4-11.4 (c)	Any insurance producer charging a fee to an insured or prospective insured shall first obtain a written, signed agreement containing certain information, including a statement as to whether a commission will be received from the purchase of insurance.  No insurance producer may charge a service fee for services rendered in the sale or service of life or health insurance.  An insurance producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case. Does not preclude persons who hold some form of formal recognized financial planning or consultant designation from using designation even when they are only selling insurance. Does not preclude persons who are members of a recognized trade or professional association, and having such terms as part of its name, from citing membership providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. Does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

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New Mexico	NM Stat. Ann. §58-13c-102 (P)	Definition: 2002. Exceptions: similar to 2002.	NM Stat. Ann. §59A-11A-7  NM Admin. Code 13.9.5 .12(C)	No insurance consultant serving any person, firm, association, organization or corporation not engaged in the insurance business, for compensation paid by the person served, shall receive any part of any commission or compensation paid by any insurer or agent in connection with the sale of any insurance which is within the subject matter of any such service.  An insurance agent, broker or producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. Provision does not permit persons to charge an additional fee for services that are customarily associated with solicitation, negotiation or servicing of policies.
New York	NY Gen. Bus. §359-eee (1)(a)	Definition: 1956. Exceptions: elements of 1956 and 2002 with additional exception.	NY Ins. §2119	No insurance agent, broker or consultant may receive any fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendations or giving advice with regard to any of the above, unless such compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of such compensation.  No insurance agent, broker or a consultant may receive any compensation as a result of the sale of insurance or annuities to, or the use of securities or trusts in connection with pensions for, any person to whom any such licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve months unless such compensation is provided for in the memorandum or contract required.

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North Carolina	NC Gen. Stat. §78C-2 (1)	Definition: 2002. Exceptions: elements of 2002 with deviations, including additional exceptions.	NC Gen. Stat. §58-60-20 (c)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
North Dakota	ND Cent. Code §10-04-02 (10)	Definition: 2002. Exceptions: similar to 2002.	ND Admin. Code §45-02-02-10  ND Admin. Code §45-04-01-05 (3)	Although licensed insurance producers are exempt from licensing as consultants and are specifically prohibited from concurrently holding a consultant's license, they may perform consulting services in the ordinary course of their businesses. However, if licensed insurance producers charge a fee, or receive any type of remuneration, for rendering such consulting service, they shall comply with the provisions and requirements of a consultant's agreement set forth in ND Admin. Code §45-02-02-09.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Ohio	OH Rev. Code Ann. §1707.01 (X)	Definition: 1956. Exceptions: elements of 2002 with additional exceptions.	OH Admin. Code §3901-6-03 (G)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Oklahoma	71 OK Stat. Ann. §1-102 (17)	Definition: 2002 Exceptions: 2002 without (E) and (G) exceptions of Act.	36 OK Stat. Ann. §1435.30 (I)	A licensed insurance producer who acts as, or holds himself or herself out to be, an insurance consultant pursuant to the exemption from licensing as a consultant shall nonetheless be subject to the provisions of subsections C and H. However, nothing shall prohibit the offset of the fee payable pursuant to the provisions of subsection C by compensation otherwise payable to the insurance producer for acting as an insurance producer.

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Oregon	OR Rev. Stat. §59.015 (20)	Definition: deviates from all Acts. Exceptions: elements of 1956 and 2002.	OR Rev. Stat. §744.091  OR Admin. R. 836-071-0260  OR Admin R. 836-071-0263  OR Admin. R. 836-051-0020 (3)	In certain circumstances, an insurer or insurance producer may charge a commission or service fee only if the insurer or insurance producer has a written agreement with the prospective insured prior to the binding or issuance of an insurance policy.  When an insurance producer or affiliate receives any compensation from a prospective insured for transacting insurance, neither the insurance producer nor the affiliate may accept any compensation from an insurer or other third party for the placement of insurance unless the insurance producer, prior to the prospective insured's purchase of insurance, has received documented acknowledgement of the compensation and has provided certain disclosures.  Neither insurance producer nor consultant may accept any compensation from an insurer or other third party for services provided to the prospective insured in addition to the compensation paid by the prospective insured unless the insurance producer or consultant, prior to the transaction, has received documented acknowledgement of the compensation and has provided certain disclosures.  Such terms as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually the case.
Pennsylvania	70 PA Cons. Stat. Ann. §1-102 (j)	Definition: 1956. Exceptions: elements of all Acts.	40 PA Cons. Stat. Ann §625-3	Producers holding financial planning or consultant designation may not charge additional fee for services that are customarily associated with solicitation, negotiation or servicing of policies.  Producers shall not engage in business of financial planning without certain disclosures, including, if appropriate, that a commission for sale of insurance will be received from insurer apart from financial planning fee. Written and signed agreement is required.

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Puerto Rico	None applicable.		PR ST T. 26 s 951g (7)	Insurance consultant may not also be an authorized agent or employee of any insurer or person who has economic or financial interest or contractual relationship in insurance field with authorized insurer or producer, except as policyholder.
Rhode Island	RI Gen. Laws §7-11-101 (11)	Definition: 1956. Exceptions: elements of all.	RI Gen. Laws §27-2.4-15.1  RI ADC 11-5-27:6  RI Bulletin 2006-2 (Amended)	Where an insurance producer or affiliate receives compensation from the customer for initial placement of insurance, neither that producer nor the affiliate shall accept any compensation from an insurer or other third-party for that placement of insurance unless the producer has, prior to the customer's purchase of insurance, obtained documented acknowledgment of the compensation and provided the method of calculating the compensation.  Insurance producer shall not use terms such as financial planner, investment adviser, financial consultant, or financial counseling in such a way as to imply that the insurance agent is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. Persons are not permitted to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.  Producers who receive compensation from the insured may not accept any form of compensation from the insurer unless the producer provides a description of the methods and factors utilized for calculating compensation from the insurer or other third party and the producer obtains the insured's documented acknowledgement that such compensation will be received.
South Carolina	SC Code Ann. §35-1-102 (15)	Definition: 2002. Exceptions: 2002.	SC Code of Regulations R. 69-30 (G)(3)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

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South Dakota	SD Codified Laws §47-31B-102 (15)	Definition: 2002. Exceptions: 2002.	SD Admin. 20:06:10:04.01 (2)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling may not be used to imply that the insurance agents are engaged in an advisory business in which their compensation is unrelated to sales unless that is actually the case.
Tennessee	TN Code Ann. §48-1-102 (10)	Definition: 1956. Exceptions: similar to 1956.	Tenn. Comp. R. & Regs. 0780-01-40-.05	Terms such as financial planner, investment adviser, financial consultant, or financial counselling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales, unless such is actually the case.
Texas	TX Civ. St. Art. 581-4 (N)	Definition: 1956. Exceptions: 1956 with deviations, including additional exceptions and no exception (6) of Act.	TX Ins. Code Ann. §4005.004 (b)  TX Ins. Code Ann. §4052.055	If an agent or affiliate receives compensation from a customer for the placement or renewal of an insurance product, other than a service fee, an application fee, or an inspection fee, the agent or affiliate may not accept any compensation from an insurer or other third party for that placement or renewal unless the agent has, before the customer's purchase of insurance obtained documented acknowledgement that compensation will be received and provided information on how compensation is computed.  A life and health insurance counselor is not entitled to receive compensation for the same service provided to the same client if the counselor is licensed as a life, accident and health insurance agent and receives compensation for the service as an agent.

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Utah	UT Code Ann. §61-1-13 (1)(g)	Definition: 1956 Exceptions: 1956 and elements of 2002.	UT Code Ann. §31a-23a-501 (3)  A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if producer and insured agree on compensation and producer has disclosed the existence and source of any other compensation that accrues to producer as result of transaction. Noncommission compensation includes compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of UT Code Ann. §31a-23a-401; or other compensation arrangements approved by the commissioner.
			UT Admin. Code R590-79-6 (c)  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used unless properly licensed if required or in such a way as to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case and represented by way of required disclosure.
Vermont	VT Stat. Ann. tit 9 §5102 (15)	Definition: 2002. Exceptions: 2002.	VT Stat. Ann. tit. 8 §4724 (14)  Included in definition of unfair methods of competition or unfair or deceptive acts or practices: Nondisclosure of fees or charges--failure of agent or broker to obtain a prior written agreement concerning fees or charges made directly to the client or policyholder, for procuring, servicing, or providing advice on insurance contracts; Commissions, expense allowances, bonuses, fees, or any other compensation received directly by agents or brokers from any legal entity engaged in the insurance business are exempt.
			VT Stat. Ann. tit. 8 §4802 (d)  No person may concurrently hold a consultant's license and an insurance producer's, surplus lines insurance broker's, or limited lines producer's license in any line.
			VT Bulletin 22  Clarifies unfair or deceptive practices relating to identification or title of insurance producer.

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			VT Admin. Code 4-3-4.6. (c)	Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Virginia	VA Code Ann. §13.1-501	Definition: 2002. Exceptions: 2002 with deviations, including additional exceptions and no exception (G) of the Act.	VA Code Ann. §38.2-1839	Licensed insurance consultant that sells, solicits or negotiates insurance as part of his services shall enter into a written contract with his client prior to the purchase of any insurance by that client specifying the amount and basis of consulting fee and the duration of employment. If the insurance consultant also receive commissions, incentives, bonuses, overrides, or any other form of remuneration as a result of his services for selling, soliciting, or negotiating insurance as a part of his services in addition to a consulting fee, unless otherwise prohibited, such information shall be disclosed in the contract.
	21 VA Admin. Code 5-80-210	Includes exception (G) of the 2002 Act. Also excludes persons in investment advisory business whose only client is, among others, an insurance company licensed to transact business and an employee benefit plan with assets of not less than \$5,000,000.		
Washington	WA ST §21.20.005 (8)	Definition: 2002. Exceptions: elements of 2002 and 1956 with deviations.	WA ST §48.30.157	Commissioner may permit an insurance producer to enter into arrangements with insureds to charge a reduced fee in situations where services that are charged for are provided beyond the scope of services customarily provided in connection with the solicitation and procurement of insurance.
			WA Admin. Code §284-23-240 (3)	Terms such as financial planner, investment adviser, financial consultant or financial counselor shall not be used by an agent unless the agent is generally engaged in an advisory business.

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West Virginia	WV Code §32-4-401 (g)	Definition: 2002. Exceptions: elements of all.	WV C.S.R. §114-11-5 (5.14)	No insurance producer may use terms such as "financial planner," "investment adviser," "financial consultant" or "financial counseling" to imply that he or she is generally engaged in an advisory business in which compensation is unrelated to sales unless that actually is the case. Provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.
Wisconsin	WI Stat. Ann. §551.102 (15)	Definition: 2002 Exceptions: 2002 with additional exception.	WI Stat. Ann. §628.32  WI ADC Ins. 2.14 (5)(c)	Intermediary may not accept compensation from an insured or from both an insured and another source due to the insured's purchase of insurance or for advice regarding the insured's insurance needs or coverage unless the intermediary, before the insured incurs an obligation to pay compensation in writing discloses amount of compensation to be paid by the insured, excluding commissions paid by the insurer to the intermediary and if compensation will be paid by another source, the fact that the intermediary will also receive compensation from the other source.  Terms such as financial planner, investment adviser, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance intermediary is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
Wyoming	None applicable.		WY Stat. Ann. §26-9-220 (f)	An insurance producer who is also licensed as a consultant shall not act in the dual capacity of an insurance producer and a consultant in the same insurance transaction.



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## State Laws Governing Suitability in Variable Life Insurance Sales

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### I. State Laws Governing VLI Suitability- Historical SEC & FINRA Parallels

### II. Suitability Requirements in the NAIC Model Variable Life Insurance Regulation

- A. Scope and Impact of Suitability Provisions in the NAIC Model Variable Life Insurance
  - 1. Thirty-one jurisdictions have adopted the NAIC Model Variable Life Insurance Regulation, and an additional eleven have adopted related provisions.<sup>12</sup> Twenty-nine have specific provisions concerning suitability, which are set forth in a chart at the conclusion of this outline segment.
  - 2. Suitability standards are explicit and unequivocal in NAIC Model Variable Life Insurance Regulation, as explained below.
- B. Section 3 of the NAIC Model Variable Life Insurance Regulation establishes qualifications of insurers to issue variable life insurance, and Paragraph (C) sets forth detailed Standards of Suitability.
- C. Section 3(C) states that:
  - 1. Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a *written statement* specifying the *standards of suitability* to be used by the insurer. See, NAIC Model Regulation Service (January 1996) at 270-731 [emphasis added].
  - 2. The standards of suitability shall specify that no recommendation shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of the policy is *not unsuitable* for the applicant on the basis of information furnished *after reasonable inquiry* of the applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or the agent making the recommendation. *Id.* [emphasis added].
- D. The NAIC commentary on Section 3(C) provides additional clarification
  - 1. This section imposes a duty on both the insurer and its agents to make a *good faith, reasonable inquiry as to the facts and circumstances concerning a prospect's insurance and financial needs* and to make no recommendation that a prospect purchase variable life insurance when such a purchase is not reasonably consistent with the information that is known or reasonably should

<sup>12</sup> See, NAIC Model Regulation Service (January 1996) at 270-771.

be known to the insurer or agent. See, NAIC Model Regulation Service (January 1996) at 270-731 [emphasis added].

2. According to the commentary, some of the factors which would be considered are:
    - a. age,
    - b. earnings,
    - c. marital status,
    - d. number and age of dependents,
    - e. the value of savings and other assets,
    - f. and current life insurance program.
  3. The commentary explains that the substantive standard in Section 3(C) was derived from the federal securities laws. *Id.*
  4. The commentary emphasizes that the duty to make a good faith reasonable inquiry must be stressed since an insurer or agent cannot continually seek to avoid the obligations imposed by this section by claiming that a prospect refused to divulge information sufficient to make a professional evaluation of the suitability of variable life insurance to particular circumstances. *Id.*
- E. When the Model Variable Life Insurance Regulation was substantially amended in 1983 to accommodate flexible premium variable life insurance, this suitability provision was revised and updated to reflect state and federal regulatory changes that had evolved since the original Model Variable Life Insurance Regulation that governed only scheduled premium variable life insurance. The commentary explains that:
1. The 1983 amendments made changes in this section to achieve a more practical application of the suitability concept to sales of variable life insurance.
  2. While the concept originally set forth in this section was substantially similar to that utilized in the federal securities laws, the application of the concept was exaggerated as part of the effort to avoid SEC regulation of variable life insurance.
    - a. For example, prior to the 1983 amendments, the section required that the insurer adopt the standards of suitability by *formal action of its board of directors*.
      - (1) This requirement of board adoption was found to be unprecedented in NAIC model insurance statutes and unnecessary to the application of the suitability concept to sales of variable life insurance.
    - b. Similarly, the standards of suitability were “applicable to and binding on the insurer’s officers, directors, employees, affiliates and agents with respect to the suitability of variable life insurance for the applicant.”
      - (1) The potential for mischief of this broad requirement was considerable, raising, for example, the possibility of liability for violations of the suitability standards being imposed on individual officers, directors,

employees or agents who never even knew of the transaction involved.

- (2) These two aspects of the original Model Variable Life Insurance Regulation were deleted in the 1983 amendments. See, NAIC Model Regulation Service (January 1996) at 270-32.

F. Other NAIC interpretative guideposts on Section 3(C) suitability appear in a NAIC staff report which the NAIC adopted in 1974, that emphasized *three basic areas of ideal suitability* concerning VLI:

1. needs *perceived* by the insured;
2. needs *perceived* by the agent; and
3. *persistence*. See, 1974 Proceedings of the NAIC II at 540 [emphasis added].

G. The NAIC staff report contains further interpretive guidance.

1. The NAIC staff report was adopted as an interpretive guide to Section 3(C) in 1974 and offers the following language “as an informal consensus” on the meaning of suitability in the model variable life insurance regulation.

a. Definition—“Suitability” means the likelihood that the purchase of variable life insurance is reasonably consistent with:

- (1) The *expressed insurance objectives and needs* as perceived by the prospective insured;
- (2) The *reasonable objectives and needs* of the prospective insured as determined objectively by a professional agent after a diligent reasonable inquiry into relevant financial, family and other background information concerning the prospective insured; and
- (3) The *potential that the prospective insured will persist* with the policy for such a period of time that the insurer’s acquisition costs are amortized over a reasonable period of time. See, 1974 Proceedings of the NAIC II at 547 [emphasis added].

b. General Rules of Interpretation accompany the staff report that became the interpretive guide adopted by the NAIC, and explain:

- (1) When variable life insurance meets characteristics (1) and (3) or (2) and (3), it is probably still “suitable” in most instances.
- (2) Variable life insurance is clearly “unsuitable” when it meets none of the three characteristics for a given prospect.
- (3) Variable life insurance is probably “unsuitable” in the absence of extraordinary factors when it does not meet characteristic (3).

- (4) Other situations must be judged on their individual facts.

H. Even further clarifications to these VI standards of suitability were added in 1983. The commentary explains that:

1. In adopting the 1983 amendments, the NAIC recognized that the proliferation of variable life insurance product designs anticipated as a result of those amendments might make suitability, and particularly factors (1) and (2), even

more important. See, NAIC Model Regulation Service (January 1996) at 270-33 [emphasis added].

2. On the other hand, it was understood that the possibility of more variable life insurance products designed to compete with investment oriented products of other financial institutions will make factor (3) less significant because policyholders will be more likely to move among competing financial institutions will make factor (3) less significant because policyholders will be more likely to move among competing financial institution products for reasons such as rate of return, tax considerations and economic conditions. *As a result, persistency will be less and less relevant as a measure of suitability.* *Id.*
3. Section 3(C) requires the insurer to *formally adopt* its suitability standards.
  - a. Earlier drafts of Section 3(C) specifically required that the insurer establish and file with the commissioner guidelines or *profiles of applicants and situations* in which variable life insurance would not generally be suitable.
  - b. This specific requirement was deleted from Section 3(C).
- I. Other aspects of interest concerning VLI suitability from the NAIC Model Variable Life Insurance Regulation
  1. Private rights of action. The commentary notes that:
    - a. As to the potential legal implications of adopting standards of suitability, it is not unlikely in those jurisdictions where the doctrine of implied rights of action is accepted, that the theory would give rise to an enforceable obligation to the insured<sup>13</sup>. See, NAIC Model Regulation Service (January 1996) at 270-33 [emphasis added].
    - b. Furthermore, it is probable that the commissioner would have the authority (either formal or informal) to reverse an unsuitable sale upon the request of the policyholder. This would be in addition to the full range of sanctions available to him. *Id.*
  2. Group Contracts
    - a. The commentary states that the requirements of Section 3(C) would not be applicable with respect to each individual employee involved in a non-contributory pension plan situation. See, NAIC Model Regulation Service (January 1996) at 270-33.
  3. Lapse Rates not Germane
    - a. Prior to the 1983 amendments, the section included provisions pursuant to which lapse rates were to be utilized as indicators of suitability.
      - (1) These provisions were based upon the realization that suitability is a difficult area to police and the hope that lapse rates, by indicating persistency, would be an accurate yardstick for suitability.

<sup>13</sup> *Anderson v. Knox*, 297 F.2d 702 (9<sup>th</sup> Cir.), *cert. Denied*, 370 U.S. 915 (1961), the U.S. Court of Appeals for the Ninth Circuit held that an insurance agent who had induced a client to purchase excessive amounts of bank financed insurance was liable for damages in common-law fraud because the policies were not suitable to the plaintiff's needs.

- (2) The 1983 amendments eliminated references to lapse rates as measures of suitability.
- (a) The commentary explains that “[w]ith regard to conventional insurance policies, lapse rates, even those reflecting experience over a very long period of time, are suspect as an indicator of whether or not sales of insurance were suitable when made. Lapse rates are even less relevant to the suitability of sales of variable life insurance.” See, NAIC Model Regulation Service (January 1996) at 270-33.
  - (b) Lapse rates are affected by a variety of factors, the most significant of which ordinarily is changes in the policyholder’s perception of the attractiveness of the policy due to changes in the general economy and in the economic circumstances of the policyholder. *Id.*
  - (c) In the case of variable life insurance, an additional important factor is the performance of the separate account relative to other financial alternatives. Because of the significance of these factors, the use of lapse rates as a measure of suitability was found to be inappropriate. *Id.*

J. Suitability Information Required on Applications

1. Section 8(C) the NAIC Model Variable Life Insurance Regulation requires that variable life insurance applications *contain questions designed to elicit suitability information from applicants*. See, NAIC Model Regulation Service (2010) at 270-18.
  - a. This requirement dovetails with the suitability requirements in Section 3(C) discussed above.
  - b. The commentary to Section 3(C) cross references the required application information in Section 8(C). See, NAIC Model Regulation Service (2010) at 270-64.

**STATES WITH SUITABILITY PROVISIONS IN  
VARIABLE LIFE INSURANCE LAWS AND REGULATIONS**

State	Suitability Standard	Suitability Information in Application
Arizona	Ariz. Rev. Stat. § 20-2602(C)	Ariz. Rev. Stat. § 20-2608
Arkansas	Ark. Code Ann. § 33-Article III	Ark. Code Ann. § 33- Article VIII.
California	Cal. Code Regs. tit. 10, § 2534.2(c)	
Colorado	Colo. Code Regs. § 4-1-3(V)	Colo. Code Regs. § 4-1-3(VI)
Connecticut	Conn. Agencies Reg. § 38a-433-3(c)	Conn. Agencies Reg. § 38a-433-8

Delaware.	Admin. Code § 44(3)	Del. Admin. Code § 44(8)
D.C.	D.C. Mun. Regs. Tit. 26, § 2704.1	D.C. Mun. Regs. Tit. 26, § 2730.1
Georgia	Ga. Comp. R. & Regs. R. 120-2-32-.03	Ga. Comp. R. & Regs. R. 120-2-32-.09
Indiana	Ind. Admin. Code tit. 760, r.1-33-3	Ind. Admin. Code tit. 760, r.1-33-8
Kentucky	806 Ky. Admin. Regs. 15:030	
Louisiana	La. Admin. Code tit. 35, § 8303(3)	
Maine	Code Me. R. § 02-031 Chapter 300 Article V § 3 Authority of Insurer to Issue Variable Life Insurance	Code Me. R. § 02-031 Chapter 310 Article V § 3 Authority of Insurer to Issue Variable Annuity Contracts
Maryland	Md. Regs. Code tit. 31, § 09.12.01.02(D)	
Massachusetts	Mass. Regs. Code tit. 211, § 95.02 (3).	
Michigan	Mich. Admin. Code r. 500.844 Rule 4	Mich. Admin. Code r. 500.864 Rule 24
Mississippi	Miss. Reg. 84-101(3)(c)	
Missouri	Mo. Code Regs. Ann. Tit. 20, §400- 1.030(2)(C)	Mo. Code Regs. Ann. Tit. 20, §400-1.030(7)(C)
Nebraska	Neb. Admin. Code 210.15.003.03	Neb. Admin. Code 210.15.008.03
New Mexico	N.M. Admin. Code tit. 13, § 9.8.10	N.M. Admin. Code tit. 13, § 9.8.35
North Carolina	N.C. Admin. Code tit. 11, r. 12 .0435(3)	N.C. Admin. Code tit. 11, r. 12 .0440
North Dakota	N.D. Admin. Code § 45-04-02-03(3)	N.D. Admin. Code § 45-04- 02-07
Ohio	Ohio Admin. Code § 3901-06-08(D)	Ohio Admin. Code § 3901- 06-08(I)
Pennsylvania	31 Pa. Code § 82.14.	31 Pa. Code § 82.62.
South Carolina	25A S.C. Code Ann. Regs. 69-12, Article III	25A S.C. Code Ann. Regs. 69-12, Article VIII
Texas	28 Tex. Admin. Code § 3.803(3)	28 Tex. Admin. Code § 3.808
Vermont	Vt. Code R. I-88-3(3)	Vt. Code R. I-88-3(8)
Virginia	14 Va. Admin. Code § 5-80-50	14 Va. Admin. Code § 5-80- 310

## ACLI LAW SURVEY

### Agent Investigation: Character and Background Investigation Requirements

This multi-state survey covers state requirements for agent character and background investigations—including fingerprinting—prior to licensing and appointment. Most jurisdictions require that insurance producer license applicants be competent, trustworthy, and of good moral character in order to obtain a license. However, some now expressly require appointing insurers to certify that they have investigated the applicant's character and background and have found the applicant to be qualified and worthy of a license. Related to these requirements is the portion of the NAIC Producer Licensing Model Act that allows the commissioner to refuse to issue an insurance producer's license if the commissioner finds that the individual has committed any act that is a ground for denial, suspension or revocation of the license. The survey now notes if the model act criteria for not approving a license application, or substantially similar language, has been adopted by a state.

This survey does not constitute a legal opinion or conclusion by ACLI, its staff, or its member companies and should not be used as the sole basis for making individual company decisions or conclusions. The *Law Surveys* are reviewed and updated annually. Users are encouraged to refer to the text of the statutes and regulations cited for the most current and complete information.

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ACLI Law Survey

Agent Investigation (39)

State	Citation	Requirements
Alabama	AL Code §27-7-5	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license.
	AL Code §27-8A-13	Commissioner may conduct background investigations for all applicants for insurance producer license.
	AL Admin. Code 482-1-146-.04	Applicant who discloses a criminal history in an application for a license must submit a completed criminal history disclosure form and all documentation requested in applicable portions of the form.
	AL Bulletin 1-24-2002	Insurer is required to file a statement showing what investigation it has made of the applicant's qualifications, character and fitness for the duties to be assumed, and the results of such investigation.
Alaska	AK Stat. §21.27.020	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, nonrenewal, suspension or revocation of the license.
	AK Stat. §21.27.040	Applicant shall furnish to the director a full set of fingerprints so that the director may obtain criminal justice information as provided under AK Stat. §12.62 and a national criminal history record check under AK Stat. §12.62.400.
	AK Admin. Code tit. 3 §23.010	Applicant shall be fingerprinted by a qualified, authorized person and shall provide director with fingerprint card to be forwarded to appropriate agency for processing and search.
	AK Memorandum 10-29-2002 AK Memorandum 4-26-2005	An individual seeking to obtain an insurance license is required to submit two fingerprint cards for the division to perform criminal background checks on the applicant.

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State	Citation	Requirements
Arizona	AZ Rev. Stat. Ann. §20-285	<p>NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license prescribed in AZ Rev. Stat. Ann. §20-295.</p> <p>Director may require applicant to provide any document that is reasonably necessary to verify the information that is contained in an application and other information including prior criminal records.</p> <p>Before granting a license, the director may require the applicant to submit a full set of fingerprints to the department for the purpose of obtaining a state and federal criminal records check.</p> <p>Note: See AZ Department of Insurance website for fingerprint requirement information.</p>
Arkansas	AR Code Ann. §23-64-506  AR Code Ann. §23-66-513  AR Bulletin 3-2006	<p>NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in AR Code Ann. §23-64-512. Commissioner shall conduct investigation of applicant's background, trustworthiness, personal and business reputation, and financial responsibility.</p> <p>Prior to approval by an insurer of an individual agent with no previous appointments on his or her Arkansas license, the insurer shall conduct an investigation of the applicant's identity, residence, experience, or instruction as to the kinds of insurance to be transacted, and of the agent's character, financial condition, and financial history.</p> <p>Department is required to conduct a criminal background check on resident applicants. Department's background check does not remove the responsibility of the appointing insurer to conduct an initial appointment investigation under Ark. Code Ann. §23-66-513.</p>
California	CA Ins. Code §1652 (b)  CA Bulletin 78-9 CA Notice 5-19-95	<p>Commissioner may require submission of authenticated fingerprints in connection with application.</p> <p>Fingerprints of applicants for producer licensing are required as part of the necessary background information and identity check. Upon passing the qualifying license examination, the applicant will be fingerprinted at the examination site.</p> <p>Note: See CA Department of Insurance website for fingerprint requirement information.</p>

State	Citation	Requirements
Colorado	CO Rev. Stat. Ann. §10-2-404	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in CO Rev. Stat. Ann. §10-2-801. Before approving the application, the commissioner shall verify that the individual is competent, trustworthy, and of good moral character and good business reputation.
Connecticut	CT Gen. Stat. Ann. §38a-702e (a)	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in CT Gen. Stat. Ann. §38a-702k.
Delaware	DE Code Ann. tit. 18 §1706  DE Agents' 5 (amended)	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in DE Code Ann. tit. 18 §1712. Each resident application shall contain a statement of the applicant's criminal history, which the applicant shall obtain from the Delaware State Bureau of Identification.
District of Columbia	DC Code Ann. §31-1131.06  DC Code Ann. §31-1131.06a  DC Code Ann. §31-632	<p>NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in DC Code Ann. §31-1131-12.</p> <p>Applicant for a resident insurance producer license shall submit to the commissioner the individual's fingerprints along with the individual's name, address, and written consent to the performance of a criminal history record background check.</p> <p>"The Commissioner shall require state and national criminal history record background checks of each applicant for the purpose of determining eligibility for a license, registration, or charter. In order for the Commissioner to obtain and receive national criminal history records from the FBI's Criminal Justice Information Services Division, the Commissioner shall require each applicant to submit a full set of fingerprints, including a scanned electronic or digital fingerprint or a hard copy fingerprint. The applicant shall bear the cost of administering and processing the fingerprinting and criminal history record background checks."</p>



State	Citation	Requirements
Florida	FL Stat. Ann §624.34	The Department of Law Enforcement may accept fingerprints of individuals who apply for a license as an agent with the department or office under the provisions of the Florida Insurance Code. The Department of Law Enforcement shall submit the fingerprints to the Federal Bureau of Investigation to check federal criminal history records. Criminal records shall be used by the department and office for the purpose of issuance, denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.
	FL Stat. Ann §626.025	To transact insurance, agents shall comply with consumer protection laws, including the following, as applicable: Fingerprinting requirements for resident and nonresident agents, as required under FL Stat. Ann §626.171 or FL Stat. Ann §626.202; fingerprinting following a department investigation under FL Stat. Ann §626.601; the submission of credit and character reports, as required by FL Stat. Ann §626.171 or FL Stat. Ann §626.521.
	FL Stat. Ann §626.171	Applicant must submit a set of fingerprints to the department and pay fingerprint processing fee set forth in FL Stat. Ann §624.501. Fingerprints shall be used to investigate the applicant's qualifications pursuant to FL Stat. Ann §626.201. The fingerprints shall be taken by a law enforcement agency, designated examination center, or other department-approved entity. The department may not approve an application for licensure as an agent if fingerprints have not been submitted.
	FL Stat. Ann §626.201	The department may request any information that it deems necessary to protect the public and ascertain the applicant's qualifications. Once the application has been completed the department may further investigate the applicant's character, experience background and fitness for license of appointment. An investigation of the applicant's qualifications, character, experience, background, and fitness must include submission of the applicant's fingerprints to the Department of Law Enforcement and the Federal Bureau of Investigation and consideration of any criminal records.
	FL Stat. Ann §626.451	By authorizing an appointment for a licensee, the insurer is certifying to the department that an investigation of the licensee has been made and that in the insurer's opinion the licensee is of good moral character and reputation, and is fit to engage in the insurance business. The insurer shall provide to the department any other information the department or office may reasonably require relative to the proposed appointee.
	FL Stat. Ann §626.521	Appointing insurer must, coincidentally with appointment of first time applicant for license, secure and keep on file, a full detailed credit and character report made by an established and reputable independent reporting service.
	69 FL Admin. Code Ann. 69B-211.022	Insurer must retain the credit and character report for no less than 3 years from the date of termination of appointment or the date of termination of employment.

State	Citation	Requirements
Georgia	GA Code Ann. §33-23-5.1	Commissioner shall be authorized to obtain conviction data with respect to an applicant. The commissioner shall submit to the Georgia Crime Information Center two complete sets of fingerprints of the applicant for appointment or employment, the required records search fees, and such other information as may be required.
	GA Comp. R. & Regs. 120-2-2-.14	Insurer shall certify that a national reporting service report covering at least the past 5 years of the applicant's life, has been received. Report obtained through other means covering the same time period will be acceptable, with prior written approval of commissioner.
	GA Comp. R. & Regs. 120-2-3-.11	Applicant must give permission for a criminal background investigation.  All new resident applicants, excluding active licensees and individuals that apply for reinstatement within 6 months of expiration date, shall be required to submit electronic fingerprints through a vendor selected by the department for a criminal background check. The applicant shall bear the cost.

State	Citation	Requirements
Hawaii	HI Rev. Stat. Ann. §431:2-201 (c)(3)	Commissioner may require applicants to provide fingerprints and pay a fee to allow the commissioner to make a determination of license eligibility after obtaining state and national criminal history record checks.
	HI Rev. Stat. Ann. §431:9-204 (a)(1)	Applicant shall furnish information including the applicant's identity, personal history, experience, business records, and a full set of fingerprints, including a scanned file from a hard copy fingerprint, for the commissioner to obtain and receive national and state criminal history records checks pursuant to § 846-2.7.
	HI Rev. Stat. Ann. §431:9A-106	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for a licensure sanction set forth in HI Rev. Stat. Ann. §431:9A-112.
Idaho	ID Code §41-1007	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in Title 41 of the Idaho Code. Before approving any application for a resident insurance producer license, the director shall find that the applicant has submitted the applicant's fingerprints, as may be required by the director.
	ID Code §41-1009	Nonresident applicant for insurance producer license may be required by director to submit applicant's fingerprints on a form prescribed by the director.
	ID Admin. Code 18.01.15.016	All producer license applicants who are required by the director to submit fingerprints shall file a set of their fingerprints with the department of insurance in a form acceptable to the FBI for the purpose of determining whether the qualifications as set forth in the Idaho Code are fulfilled.
	ID Advisory Notice 5-1-2003 (#1) ID Advisory Notice 5-1-2003 (#2)	All appointments and appointment terminations must be submitted electronically. Non-resident producer license applicants are not required to file a fingerprint card or pay a fingerprint processing fee.
Illinois	215 ILCS 5/500-30	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in 215 ILCS 5/500-70.
Indiana	IN Code Ann. §27-1-15.6-6	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license.

State	Citation	Requirements
Iowa	IA Code Ann. §522B.5	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in IA Code Ann. §522B.11.
Kansas	KS ST §40-4905	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license pursuant to KS ST §40-4909.
	KS ST §40-4912	A company may appoint an insurance agent as an agent of that company upon determination that the insurance agent is of good business reputation.
Kentucky	KY Rev. Stat. Ann. §304.9-105	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in KY Rev. Stat. Ann. §304.9-440. Before approving the application, the executive director shall find that the applicant is trustworthy, reliable and of good reputation, evidence of which shall be determined through an investigation by the commissioner.
	KY Rev. Stat. Ann. §304.9-270	Prior to appointment, the insurer shall satisfy itself through investigation that the named applicant has not been convicted of any felony offense involving dishonesty or a breach of trust unless the named applicant has received written consent from the commissioner that specifically refers to KY Rev. Stat. Ann. §304.47-025(3).
Louisiana	LA Rev. Stat. Ann. §22:1546	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license as set forth in LA Rev. Stat. Ann. §22:1554. Commissioner shall require a criminal history record check on each applicant for a resident insurance producer's license. Commissioner shall require applicant to submit a full set of fingerprints in order for the commissioner to obtain a criminal history record.

State	Citation	Requirements
Maine	ME Rev. Stat. Ann. tit. 24-a §1420-E	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the superintendent find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license as set forth in ME Rev. Stat. Ann. tit. 24-a §1420-K.
	ME Rev. Stat. Ann. tit. 24-a §1905	Once application is complete the superintendent shall investigate applicant's experience, background and fitness for the license. Superintendent may obtain a credit and investigative report from a recognized and established independent investigation and reporting agency. Payment of report cost is responsibility of applicant and must be included with application.
Maryland	MD Code Ann. Insurance §10-105	An applicant may not have committed any act that the commissioner finds would warrant denial of a license under MD Code Ann. Insurance §10-126.
	MD Code Ann. Insurance §10-111	A person who applies for a license as a resident insurance producer shall submit to the commissioner any additional information or documentation that the commissioner requires, including any information or documentation to determine the professional competence, good character, and trustworthiness of the applicant.
	MD Regs. Code 31.03.12.04	Applicant who is required by MD Regs. Code 31.03.12.03 to obtain written consent to engage in the business of insurance (due to a conviction of certain felonies) shall apply for a records check for the existence of criminal convictions in the criminal history records information maintained by the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services and received from the Federal Bureau of Investigation. Request for criminal history record shall include 2 legible sets of fingerprints on forms approved by the Director of the Central Repository and the FBI. Copy of criminal records check application shall be sent to commissioner of insurance. Application shall be accompanied by at least three letters of reference addressed to the commissioner attesting to the character and reputation of the applicant.
Massachusetts	MA Gen. Laws Ann. Ch. 175 §162L	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in MA Gen. Laws. Ann. Ch. 175 §162R.
Michigan	MI Comp. Laws Ann. §500.1205	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in MI Comp. Laws. Ann. §500.1239.

State	Citation	Requirements
Minnesota	MN Stat. Ann. §60K.37	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in MN Stat. Ann. §60K.43.
	MN Stat. Ann. §60K.50	Applicant for resident producer license must consent to a criminal history record check, submit a fingerprint card in a form acceptable to the commissioner, pay the fee required to perform criminal history record checks.
		No insurer or representative of an insurer shall knowingly appoint a producer who is known to the insurer or representative to have engaged in any of the activities in MN Stat. Ann. §60K.43 or to be otherwise unqualified or unfit.
		Note: See "Fingerprinting: Frequently Asked Questions."
Mississippi	MS Code Ann. §83-17-75	Before the issuance of a license or certificate of authority, the commissioner shall require the company requesting appointment of the applicant as producer for the first time to furnish a certificate to the commissioner, verified by an executive officer or managing general or special agent of such company, that the company has duly investigated the character and record of such person and has satisfied itself that such person is of good moral character and is qualified, fit and trustworthy to act as its producer.
	MS Code Ann. §83-17-61	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in MS Code Ann. §83-17-71.
Missouri	MO Ann. Stat. §375.015	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in MO Ann. Stat. §375.141.

State	Citation	Requirements
Montana	MT Code Ann. §33-17-211	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in MT Code Ann. §33-17-1001.
	MT Code Ann. §33-17-220	Each applicant must obtain a complete background examination. The applicant or insurer must pay the cost of the background examination. The background examination report must provide information to confirm the applicant's (A) identity; (B) current address; (C) professional license certification; (D) military service; and (E) existing or ongoing criminal investigations and court records relating to the applicant; and regulatory agencies' disciplinary actions concerning the applicant.  The commissioner may require fingerprints to be collected and remitted in an electronic format to facilitate periodic resubmission of fingerprints.
Nebraska	NE Rev. Stat. Ann. §44-4053	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in NE Rev. Stat. Ann. §44-4059.
Nevada	NV ST §683A.251	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license. A person who is a resident of the state applying for a license must furnish a complete set of fingerprints.
	NV Admin. Code 683A.272	An applicant for a license as a resident producer of insurance must submit with his application two complete sets of fingerprints.  The commissioner may issue a license as a resident producer of insurance before the criminal background search if the applicant indicates and certifies on application that the applicant has no criminal history and if applicant has complied with the procedures required.
New Hampshire	NH Rev. Stat. Ann. §402-J:6	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in NH Rev. Stat. Ann. §402-J:12.

State	Citation	Requirements
New Jersey	NJ Admin. Code §11:17-2.3	An application for an individual license for a first time applicant must contain responses to questions concerning an applicant's character and fitness for licensing and, if a resident, properly completed criminal history requests and fingerprint forms in a format prescribed by the department, which shall include electronic fingerprinting. Applicant shall complete an electronic fingerprint scan through the vendor approved by the department, pay the fees required for its processing, and upon request by the department, submit proof of completion. Upon request by the department, a licensed producer or license applicant shall supply copies of any complaint, indictment, judgment of conviction or other related documents.
	NJ Admin. Code §11:17-2.11	
	NJ Stat. Ann. §17:22A-32	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license.
	NJ Bulletin 2002-27	All new applications for producer licenses submitted to the department shall include fingerprint cards for State and Federal criminal history checks.
New Mexico	NM Stat. Ann. §59A-11-2	The superintendent may require a criminal history background investigation of the applicant for a license by means of fingerprint checks by the department of public safety and the federal bureau of investigation.
New York	NY Ins. §2103 (h)	The superintendent may refuse to issue any insurance agent's license if, in his judgment, the proposed licensee is not trustworthy and competent to act as such agent, or has given cause for the revocation or suspension of such a license, or has failed to comply with any prerequisite for the issuance of such license.

State	Citation	Requirements
North Carolina	11 NCAC 6A.0412	Before appointing an agent, an insurance company shall determine that the agent has not committed any act that is a ground for probation, suspension, nonrenewal, or revocation set forth in NC Gen. Stat. §58-33-46.
	NC Gen. Stat. §58-33-31	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license.
	NC Gen. Stat. §58-33-48	Applicant for a resident insurance producer license shall furnish the commissioner with a complete set fingerprints for the purpose of a search of the applicant's criminal history record file. The applicant's fingerprints shall be certified by an authorized law enforcement officer.
	11 NCAC 6A.0418	Each resident insurance producer license applicant who is required to submit fingerprints under NC Gen. Stat. §58-33-48 shall have a complete set of their fingerprints electronically captured by a criminal law enforcement agency approved by State Bureau of Investigation (SBI) to submit fingerprints via electronic means. Applicant shall complete and submit the Electronic Fingerprint Submission Release of Information Form and the Authority for Release of Information Form with the insurance producer license application.
North Dakota	ND Cent. Code §26.1-26-13.3	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in ND Cent. Code §26.1-26-42.
	ND Cent. Code §26.1-26-14	The commissioner may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter which the commissioner believes necessary or advisable to determine compliance with this chapter or for the protection of the public. Under ND Cent. Code §57-38-57, the tax commissioner is permitted to share confidential tax information with the commissioner for the purpose of . . . refusing to issue a license to a producer who has failed to pay income tax.
	ND Cent. Code §26.1-26-15	An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.
	ND Bulletin 2009-2	An applicant has a duty to report his criminal history or prior administrative action taken by other governmental agencies against him. An applicant's failure to disclose his or her criminal history or prior administrative action is grounds for denial of a license under ND Cent. Code §26.1-26-42.

State	Citation	Requirements
Ohio	OH Rev. Code Ann. §3905.05	The applicant shall consent to a criminal records check and shall submit a full set of fingerprints to the superintendent of insurance. The superintendent of insurance shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check based on the applicant's fingerprints. The superintendent of insurance shall request that criminal record information from the federal bureau of investigation be obtained as part of the criminal records check.
	OH Rev. Code Ann. §3905.051	
	OH Rev. Code Ann. §3905.06	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the superintendent find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in OH Rev. Code Ann. §3905.14. The superintendent must also find that the applicant has consented to a criminal records check and that the results of the criminal records check are satisfactory.
Oklahoma	36 OK Stat. Ann. §1435.7	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in 36 OK Stat. Ann. §1435.13. An applicant for any license required by the provisions of the Oklahoma Producer Licensing Act shall demonstrate to the insurance commissioner that the applicant is competent, trustworthy, financially responsible, and of good personal and business reputation.
	OK Admin. Code §365:1-9-12.2	All appointing companies shall conduct a background check to verify the trustworthiness, financial responsibility, competence, reputation and fitness of all appointed agents.

State	Citation	Requirements
Oregon	OR Admin. R. 836-071-0323	When the director considers an application for a license that indicates the applicant has been convicted of a crime or crimes described OR Rev. Stat. §744.074 (1)(f), the director shall determine whether the crime or any of the crimes is an offense under 18 U.S.C. sec. 1033 or a felony offense involving dishonesty or breach of trust that is subject to 18 U.S.C. sec. 1033.
	OR Admin. R. 836-072-0001 OR Admin. R. 836-071-0110	An applicant who has been convicted by final judgment of an offense under 18 U.S.C. sec. 1033 or of any felony offense involving dishonesty or breach of trust does not qualify for the license unless: (a) the director has reviewed the entire application of the applicant and has determined that the applicant qualifies for the license; and (b) the director issues a written consent as provided in this rule.
	OR Rev. Stat. §744.059	Applicants for licensure as insurance producers, insurance consultants, adjusters, life settlement providers or brokers must provide fingerprints and undergo a criminal background check for an initial license.
Pennsylvania	40 PA Stat. Ann. §310.5	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in OR Rev. Stat. §744.074.
	40 PA Stat. Ann. §310.6	Applicant shall submit to the department the applicant's fingerprints, in order for the department to receive national criminal history records information.
	31 PA Code §37.33	Department shall review each application and may conduct an investigation of each applicant. The department shall issue a resident or nonresident insurance producer license to the applicant when the department determines among other things that the applicant has not committed any act which is prohibited under this act.
	31 PA Code §37.62	Before a license is granted, applicant must submit sworn answers to interrogatories on forms prepared by department. Sponsoring insurer must endorse answers as evidence of applicant's good business reputation.
		Insurers shall, prior to appointing or reappointing an agent, make reasonable inquiry to: (i) determine whether the agent could be disqualified from obtaining a new or renewal certificate; (ii) verify employment history, references, current residence, and, depending upon information gleaned from the inquiry, determine whether the facts and circumstances mandate additional investigation or verification of an agent's background and responses.

State	Citation	Requirements
Puerto Rico	PR ST T. 26 s 949m	Commissioner shall not issue license of any producer with respect to any untrustworthy or incompetent person or any person who has not established to the satisfaction of the Commissioner that he/she is qualified to hold a license.
Rhode Island	RI Gen. Laws §27-2.4-8	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in RI Gen. Laws §27-2.4-14.
South Carolina	SC Code Ann. §38-43-50	Insurer must vouch for applicant and certify that applicant's character and record have been duly investigated and that applicant is trustworthy and qualified.
	SC Code Ann. §38-43-100 (F)(2)	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner or a designee find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license provided for in SC Code Ann. §38-43-130.
	SC Code of Regulations R. 69-23 (VI)(A)	Insurance company is required to investigate the "character and record" of applicant and to vouch for the applicant's trustworthiness and qualifications. Applicant must provide a copy of his criminal history record to the director when applying for a license. The director must also consider whether the individual has had an insurance producer license, or its equivalent, denied, suspended, or revoked in this state or another state, province, district, or territory.
South Dakota	SD Codified Laws §58-30-148	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in SD Codified Laws §58-30-167.
Tennessee	TN Code Ann. §56-6-106	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in TN Code Ann. §56-6-112.
	TN Code. Ann. §56-1-107	In conjunction with issuance of licenses, department has authority to query certain criminal history records.
	Tenn. Comp. R. & Regs. 0780-01-56-.07	To determine that the applicant has not committed any act that would disqualify the applicant from receiving an insurance producer license, all individuals desiring to take a licensing examination, shall submit to the commissioner two (2) full sets of fingerprints.

State	Citation	Requirements
Texas	28 TX Admin. Code §1.504	Applicant must submit electronic fingerprint receipt along with application.  License shall be issued if the department determines, among other things, that the individual has not committed an act for which a license may be denied under TX Ins. Code Ann. §4005.101 et seq.
	28 TX Admin. Code §1.509	
	TX Ins. Code Ann. §4001.103	
	TX Bulletin B-0045-06 TX Bulletin B-0043-07	
	TX Ins. Code Ann. §4001.105	
Utah	UT Code Ann. §31A-23a-105	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the director find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in UT Code Ann. §31A-23a-111. Before issuing a license to act as an agent, the department may request criminal background information and complete criminal background checks. If required to submit to a criminal background check the applicant shall submit a fingerprint card in a form acceptable to the department and consent to a fingerprint background check.
	UT Code Ann. §31A-23a-107	Each applicant for a license shall show to the commissioner that the applicant is competent and trustworthy.  Note: See Utah Department of Insurance website for fingerprint requirement information.
Vermont	VT Stat. Ann. tit. 8 §4800	An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation. The commissioner may authorize the centralized producer license registry, or other third party approved by the commissioner, to collect fingerprints on behalf of the commissioner in order to receive or conduct criminal history background checks.
	VT Stat. Ann. tit. 8 §4813f	NAIC Producer Licensing Model Act language includes requirement that, before approving an application, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in VT Stat. Ann. tit. 8 §4804.

State	Citation	Requirements
Virginia	VA Code Ann. §38.2-1820	Each applicant who has satisfied the Commission that he is of good character, has a good reputation for honesty, and has complied with the other requirements of this article is entitled to and shall receive a license in the form the Commission prescribes.
	VA Administrative Letter 1998-8	Applications will not be processed unless accompanied by criminal history record report from Central Criminal Records Exchange (CCRE).
Washington	WA ST §48.17.090	NAIC Producer Licensing Model Act language includes requirement that, before approving an application for resident producer license, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in WA ST §48.17.530. The individual applicant shall furnish information concerning the applicant's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check.
	WA ST §48.17.173	An individual, as part of the request for nonresident producer license, must furnish information concerning the individual's identity, including fingerprints, for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check.
	WA Admin. Code §284-17-055	Beginning February 1, 2013, all fingerprints for a resident insurance license must be submitted electronically. A list of locations where electronic submission is available can be found on the commissioner's web site.

State	Citation	Requirements
West Virginia	<p>WV Code §33-12-6</p> <p>WV C.S.R. 114-2-2</p> <p>WV C.S.R. 114-2A-3</p>	<p>NAIC Producer Licensing Model Act language includes requirement that, before approving an application for resident producer license, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license.</p> <p>Insurers making application for individual producers' appointments shall make an investigation as to the suitability of the appointee. The appointing company shall, prior to submitting the appointment, satisfy itself that the appointee is a suitable person and is trustworthy and qualified to act as its individual insurance producer. The insurance commissioner may direct the appointing company to furnish proof that the company has made the investigation required and that the investigation was made prior to the execution of the application for appointment.</p> <p>Applicant must submit a completed fingerprint card to the insurance commissioner for the purpose of obtaining a criminal history record check.</p>
Wisconsin	WI Stat. Ann. §628.04	<p>Applicant must show to satisfaction of commissioner that applicant is competent and trustworthy. The commissioner may require a resident applicant to provide fingerprints. The commissioner may use the fingerprints to conduct a state criminal history background investigation and a national criminal history background investigation with the federal bureau of investigation.</p> <p>Note: Although there is no statutory requirement for an insurer to conduct a background investigation, insurer must verify on agent appointment form that criminal background investigation has been conducted. See agent appointment form on OCI website: <a href="http://oci.wi.gov/ociforms/11-001.pdf">http://oci.wi.gov/ociforms/11-001.pdf</a></p>
Wyoming	<p>WY Stat. Ann. §26-9-206</p> <p>WY Stat. Ann. §7-19-201</p>	<p>NAIC Producer Licensing Model Act language includes requirement that, before approving an application for resident producer license, the commissioner find that the individual has not committed any act that is a ground for denial, suspension or revocation of the license set forth in WY Stat. Ann. §26-9-211.</p> <p>An applicant must provide the commissioner with fingerprints and other information and permission necessary for a criminal history record background check as provided in WY Stat. Ann. §7-19-201(a). The applicant shall pay the cost of the criminal history record background check.</p> <p>Persons applying for an initial license shall be required to submit to fingerprinting in order to obtain state and national criminal history record information.</p>





Agent Education (4)

## ACLI LAW SURVEY

### Agent Education Requirements

This multi-state survey summarizes the education requirements for obtaining a license as a resident agent in life insurance as well as the continuing education requirements once the license has been obtained.

The survey is divided into two sections. Section I covers the pre-licensing requirements and includes exemptions for persons holding certain professional designations if listed in the citation(s) given and course requirements including specific subject matter and availability of online coursework. Section II covers the continuing education requirements and includes the following topics if discussed in the citation(s) given: persons exempted from the education requirements by reason of professional designation, age, or length of employment; carry-over of hours; additional credit for instructors of approved courses; and course requirements including specific subject matter and restrictions on insurer provided coursework. Please refer to the ACLI's *Agents Licensing Compliance Service* for further details on education laws and regulations.

This survey does not constitute a legal opinion or conclusion by ACLI, its staff, or its member companies and should not be used as the sole basis for making individual company decisions or conclusions. The *Law Surveys* are reviewed and updated annually. Users are encouraged to refer to the text of the statutes and regulations cited for the most current and complete information.

November 2012

ACLI Law Survey

Agent Education (4)

### I. Pre-Licensing Education Requirements

State	Citation	Requirements
Alabama	AL Code §27-7-5	Hours: 20 Exemptions: CLU, CPCU, CIC, or other similar professional insurance designation as the commissioner may prescribe shall be deemed to have completed the prelicensing course Course Requirements: "Classroom hours . . . or equivalent individual instruction."
Alaska	AK Stat. §21.27.020(f)	Allows director to adopt regulations establishing educational requirements or experience requirements.
Arizona	No applicable provisions.	
Arkansas	AR Code Ann. §23-64-202(b) AR Bulletin 3-2005 AR ADC INS 31	Hours: 20 Exemptions: Applicants for adjuster and consultant licenses are exempt from prelicensing education, as are nonresident applicants for producer licenses from states that engage in reciprocal licensing with Arkansas. Course Requirements: No more than five hours per line of authority shall consist of electronic coursework for pre-licensing education. See AR ADC INS 31 for specific subject matter requirements.
California	CA Ins. Code §1749	Hours: 20 Exemptions: Any applicant for a license holding one or more of the designations specified in subdivisions (a) to (p), inclusive, of CA Ins. Code §1749.4, shall be exempted from any requirement for courses in general insurance that would otherwise be a condition of issuance of a license. Course Requirements: Courses not conducted in a classroom must be reviewed and approved according to CA Ins. Code §1749(k). Courses must include 12 hours on ethics & the California Insurance Code.
Colorado	CO Rev. Stat. Ann. §10-2-201 3 CO ADC INS 1-2-5	Hours: 50 Exemptions: The total curriculum required to obtain a CEBS, ChFC, CIC, CFP, CLU, FLMI or LUTCF designation is considered an approved prelicensing course for the life line of authority. Course Requirements: Prelicensing courses may consist either of classroom study or self-study (including online courses). At least 3 hours must specifically pertain to insurance industry ethics, 3 hours to Principles of Insurance, and 4 hours to Legal Concepts and Regulations.
Connecticut	CT Gen. Stat. Ann. §38a-702e	Hours: 40 Exemptions: Equivalent experience or training as determined by the commissioner is considered to satisfy the course requirement. Course Requirements: No applicable provisions.
Delaware	No applicable provisions.	

State	Citation	Requirements
District of Columbia	DC Code Ann. §31-1131.05a DC Code Ann. §31-1131.09	Hours: "The Commissioner may require, by rule, that an individual, other than an applicant for a title insurance producer license, complete a pre-licensing course of study before: taking the examination required; or applying for an insurance producer license."  Exemptions: "An individual who applies for a resident insurance producer license in the District shall not be required to complete any prelicensing education or examination if: they are currently licensed for the same line of authority in another state; or the application is received within 90 days of the cancellation of the applicant's previous license for the same lines of authority in another state and the prior state issues a certification that, at the time of cancellation, the person was in good standing in that state or the state's producer database records, maintained by the NAIC, its affiliates, or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested."  Course Requirements: No applicable provisions.
Florida	FL Stat. Ann. §626.7851	Hours: 40  Exemptions: Course requirement waived if applicant was employed by insurance department for at least one full year (full-time) and application for examination is made within 90 days after the date of termination of employment; holds an active license in life, or life and health, insurance in another state granting reciprocal treatment to licensees formerly licensed in Florida; or if applicant is a CLUs.  Course Requirements: May be a classroom or correspondence course. Must include 3 hours of ethics.
Georgia	GA Code Ann. §33-23-5 GA Comp. R. & Regs. 120-2-3-.07 GA Comp. R. & Regs. 120-2-3-.08	Hours: 20  Exemptions: Exceptions for the course requirements include: CLUs or FLMI's, satisfactory evidence such as a transcript from a college or university indicating successful completion of two (2) college or university courses related to insurance (such courses must relate to the lines of authority for which the Applicant has applied); a college degrees in insurance; exemptions under GA Code Ann. §33-23-5(a)(5)(A) & (B); and as the Commissioner at his discretion may determine, among others.  Course Requirements: If the prelicensing course is conducted in a virtual classroom setting system security must be in place to ensure user attendance. Subject matter requirements are outlined in GA Comp. R. & Regs. 120-2-3-.08.
Hawaii	No applicable provisions.	
Idaho	No applicable provisions.	
Illinois	215 ILCS 5/500-30 IL Admin. Code tit. 50 §3119.45	Hours: 20  Exemptions: CEBS, ChFC, CIC, CFP, CLU, FLMI, LUTCF and applicants with a college degree in insurance.  Course Requirements: At least 7.5 hours of each course must be completed in a classroom setting.
Indiana	IN Code Ann. §27-1-15.6-6 IN Code Ann. §27-1-15.6-9 IN Code Ann. §27-1-15.7-5	Hours: 20 for life or 40 for life/health  Exemptions: CLUs, CFPs and ChFCs, or another nationally recognized designation approved by the commissioner or the NAIC, as well as individuals with a bachelor's degree in insurance, are exempt from prelicensing education and portions of the exam.  Course Requirements: May be a structured setting or comparable self-study and must include ethics and requirements of the insurance laws and administrative rules of Indiana.

State	Citation	Requirements
Iowa	No applicable provisions.	
Kansas	No applicable provisions.	
Kentucky	KY Rev. Stat. Ann. §304.9-105 KY Rev. Stat. Ann. §304.9-107 806 KY Admin. Regs. 9:001	Hours: 40 (except for variable life and annuities)  Exemptions: CLUs, CICs, CPCU, ChFC, CEBS, CFP, FLMI, LUTCF, RHU, or an insurance degree from accredited college or university are exempt from prelicensing education.  Course Requirements: Classroom or self-instruction study.
Louisiana	LA Rev. Stat. Ann. §22:1139 LA Rev. Stat. Ann. §22:1571 LA Admin. Code 37:XI.517 LA Admin. Code 37:XI.507	Hours: 20  Exemptions: No applicable provisions.  Course Requirements: May be a structured setting or a verifiable approved self-study and must include instruction in applicable insurance principles, state laws and regulations, and ethical practices.  [Note: Regulation refers to the requirements of 16 hours for a life license and 32 hours for a combined life, health and accident license which were in place prior to January 1, 2010.]
Maine	No applicable provisions.	
Maryland	MD Code Ann. Insurance §10-105	Hours: No applicable provisions.  Exemptions: CLUs, Fellows of the Society of Actuaries, CEBS, ChFCs, CICs, CFPs, FLMI's, or LUTCFs  Course Requirements: Prior to examination must complete a program of study established or approved by the commissioner or have 1 year of experience.
Massachusetts	MA Gen. Laws Ann. Ch. 175 §162L MA Bulletin B-2003-08	Effective March 17, 2003, pursuant to M.G.L. Chapter 175, Section 162L, pre-licensing coursework is no longer required of individuals seeking licensure as Insurance Producers. However, the Division recommends that applicants complete a course of study prior to taking an insurance examination.
Michigan	MI Comp. Laws Ann. §500.1204 MI Comp. Laws Ann. §500.1204a	Hours: 20 for life; 40 for life/health  Exemptions: Examination or prelicensing education requirements may be waived for persons who have been a licensed insurance producer within the preceding 12 months; have received certain designations (CLUs, CLCs, AAls, ChFCs, etc); or have an associate's, bachelor's, or master's degree in insurance from an approved institution.  Course Requirements: Any combination of classroom, online, or self-study hours may be used. Courses must include instruction in ethical practices in the marketing and selling of insurance.
Minnesota	MN Stat. Ann. §60K.36	Hours: 20  Exemptions: Prelicensing education not required for an applicant with a 2-year Minnesota vocational school degree in insurance; a 4-year college degree in business with an insurance emphasis; or an applicant with any of the following designations: CEBS, ChFC, CIC, CFP, CLU, FLMI, or LUTCF.  Course Requirements: May be classroom study, verifiable self-study, or a combination of both. The first course must include an introduction to insurance and insurance-related concepts covering all of the major lines of authority except variable life and variable annuities.

## ACLI Law Survey

## Agent Education (4)

State	Citation	Requirements
Mississippi	MS Code Ann. §83-17-251 MS Bulletin 2009-2	Hours: 20 for life; 40 for life/health  Exemptions: Prelicensing education requirements exempt for individuals: with a bachelor's degree in insurance; with a current and valid CEBS, ChFC, CIC, CFP, CLU, FLMI, LUTCF designation; or those seeking licensure for the variable life and variable annuity products line of authority only  Course Requirements: Formal programs requiring attendance or self-study will be considered for prelicensing credit. The Commissioner shall determine the content requirements for each prelicensing course of study.
Missouri	No applicable provisions.	
Montana	No applicable provisions.	
Nebraska	NE Rev. St. §44-3909 NE Rev. St. §44-3910	Hours: 20  Exemptions: Prelicensing educational requirements exempt for: CEBS, ChFCs, CICs, CFPs, CLUs, FLMIs, or LUTCFs, or college degrees in insurance.  Course Requirements: For a life insurance license must complete 6 hours on insurance industry ethics and 14 hours in the area of life insurance.
Nevada	NV ST §683A.251 NV Admin. Code 683A.170 NV Admin. Code 683A.180 NV Admin. Code 683A.221	Hours: 20  Exemptions: Nonresident license; employed by an insurer for at least 10 years and has been actively involved in the underwriting of insurance or settling claims; at least 10 years' current experience as a licensed insurance producer; CEBS, ChFCs, CICs, CFPs, CLUs, FLMIs, or LUTCFs  Course Requirements: Must complete 5 hours of classroom instruction on Title 57 of Nevada Code and 15 hours of classroom study, or the equivalent in an approved self-study course, on principles and concepts of insurance in general, principles and concepts of life insurance, contracts for life insurance and provisions of policy, classifications and types of insurance, annuities, ethical responsibilities of producer, organization of business of life insurance, and regulation by government.
New Hampshire	No applicable provisions.	
New Jersey	NJ Stat. Ann. §17:22A-32 NJ Bulletin 2002-27 NJ Admin. Code §11:17-3.4	Hours:20  Exemptions: Prelicensing education waived for: CEBS; ChFCs; CICs; CFPs; CLUs; FLMIs; or LUTCF.  Course Requirements: Topics to be covered include general life insurance concepts; suitability; annuities; contracts on a variable basis; and New Jersey law and practice regarding life insurance.
New Mexico	NM Stat. Ann. §59A-11-2	Application may require information pertaining to education in the in the kind of business to be transacted under the license.
New York	NY Ins. §2103(f)(2)(A) NY Ins. §2103(g)(9)	Hours: 40  Exemptions: CLUs (at the discretion of the superintendent, as to all or any part of the exam or the prerequisite course hours)  Course Requirements: Classroom study or the equivalent in correspondence work or similar instruction.

## ACLI Law Survey

## Agent Education (4)

State	Citation	Requirements
North Carolina	NC Gen. Stat. §58-33-30 11 NCAC 6A.0701	Hours:20  Exemptions: CEBS, CIC's, and CFPs exempt from pre-licensing education.  Course Requirements: Classroom, Correspondence, and Internet instruction must include general principles of insurance and any other topics the Commissioner may establish by regulation.
North Dakota	No applicable provisions.	
Ohio	OH Rev. Code Ann. §3905.04 OH Rev. Code Ann. §3905.06 OH Admin. Code §3901-5-07 OH Admin. Code §3901-5-09	Hours: 20  Exemptions: CLUs, CEBS, ChFCs, CICs, CFPs, FLMIs; or LUTCFs and persons with a bachelor's or associate's degree in insurance from an accredited institution are exempt from pre-licensing education requirement.  Course Requirements: Classroom setting or self-study.
Oklahoma	No applicable provisions.	
Oregon	OR Rev. Stat. §744.067 OR Admin. R. 836-071-0180 OR Admin. R. 836-071-0120	Hours: 20  Exemptions: Pre-licensing education requirements waived for CFP, CEBS, LUTCF, ChFC and FLMI, insurance degrees from an accredited college or university, or satisfaction of the experience requirements of section 6 of OR Admin. R. 836-071-0180.  Course Requirements: Requirements may be completed with a verifiable online self-study program. Courses must cover basic principles of life insurance, including the duties and responsibilities of an insurance producer and Oregon-related laws.
Pennsylvania	40 PA Cons. Stat. Ann. §310.4 31 PA Code §37.25 31 PA Code §37.22	Hours: 24  Exemptions: CLUs and CICs are exempt from examination and pre-examination education.  Course Requirements: No applicable provisions.
Puerto Rico	PR ST T. 26 §950i PR ADC INS Rule XXXII	Requires evidence of high school diploma or equivalent.
Rhode Island	RI ADC 11-5-36:7 RI ADC 11-5-36:6 RI ADC 11-5-36:10 RI Gen. Laws §27-2.4-21	Hours: 20  Exemptions: CEBS, ChFC, CIC, CFP, CLU, FLMI or LUTCF designation are exempt from pre-licensing education. Also exempt- individuals holding a 4 year degree with major course work in insurance.  Course Requirements: Pre-licensing courses may consist either of classroom study or verifiable self study (including online courses). Must include 3 hours on relevant state law for each major line of authority.
South Carolina	SC Bulletin 18-2008	Beginning June 16, 2008, prelicensing education is no longer required.
South Dakota	No applicable provisions.	
Tennessee	TN Code Ann. §56-6-106 TN Admin. Code 0780-01-56-.06	Hours:20  Exemptions: No pre-licensing education requirements for CLUs, CICs, CEBS, ChFCs, CFPs, FLMIs, or LUTCFs.  Course Requirements: May be online or classroom.
Texas	No applicable provisions.	
Utah	No applicable provisions.	

State	Citation	Requirements
Vermont	No applicable provisions.	
Virginia	VA Administrative Letter 2002-8	For licenses applied for after passing the examination on or after September 12, 2002, the 45 hours of prelicensing coursework requirement is repealed.
Washington	WA ST §48.17.090 WA Admin. Code §284-17-510 WA Admin. Code §284-17-515	Hours:20 Exemptions: Pre-licensing education requirements are waived for CEBs, ChFCs, CICs, CFPs, CLUs, FLMI's, and LUTCfs. Applicants with equivalent education and experience may petition for a waiver. Course Requirements: Each course must include training on Washington insurance laws and rules applicable to that line of authority.
West Virginia	WV Code §33-12-6 WV Informational Letter 59	Hours: 30 Exemptions: CLUs exempt from pre-licensing education requirement. Course Requirements: Courses may be either classroom or correspondence/self-study.
Wisconsin	WI Stat. Ann. §628.04 WI ADC Ins. 26.04 WI Bulletin 9-27-2006	Hours: 20 Exemptions: Prelicensing education waived for CEBs, ChFCs, CICs, CFPs, CLUs, FLMI's, and LUTCfs, and applicants with a 2-year Wisconsin vocational school degree in insurance or a 4-year college degree in business with an insurance emphasis. Course Requirements: Approved correspondence, self-study, and on-line courses allowed.
Wyoming	No applicable provisions.	

## II. Continuing Education Requirements

State	Citation	Requirements
Alabama	AL Code §27-8A-1 AL Code §27-8A-5 AL Admin. Code 482-1-110-.05	Hours: 24 biennially Exemptions: 60 years of age or older who have been licensed for 15 years or more; CICs, CLUs, ChFCs, CFPs, RHUs, REBCs, CHCs, and ARMs; and newly licensed agents for 12 months following the effective date of the license. [Effective January 1, 2013- No applicable exemption by reason of professional designation, age, or length of employment. Any individual exempt from the requirements immediately prior to January 1, 2013, shall continue to be exempt according to the conditions set in AL Code §27-8A-1(e).] Carry-Over: Up to 24 hours of excess classroom hours completed during any two-year period may be carried forward to the next biennial reporting period. Credit for Instructors: Same hours as person taking that course. Course Requirements: At least 3 hours on insurance producer ethics.
Alaska	AK Admin. Code tit. 3 §23.100 AK Admin. Code tit. 3 §23.130 AK Stat. §21.27.020 AK Bulletin No. 98-2	Hours:24 biennially Exemptions: Educational requirements may not apply to a licensee who has been licensed by the division of insurance before January 1, 1980, regardless of whether or not it has been in continuous effect. Carry-Over: A maximum of eight hours may be carried over. Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. One credit hour for each hour spent preparing to instruct- up to two hours for each hour of instruction time claimed. No more than eight instructor hours during each 2-year period. Course Requirements: At least three hours must be in business insurance ethics.
Arizona	AZ Rev. Stat. Ann. §20-2902 AZ Circular Letter No. 1999-2	Hours: 20 per license term Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited Credit for Instructors: No Applicable Provision. Course Requirements: No Applicable Provision.
Arkansas	AR Code Ann. §23-64-301 AR Code Ann. §23-64-302 AR ADC INS 50	Hours: 24 biennially Exemptions: 60 years of age or older; persons who have held licenses for 15 years or more Carry-Over: Allowed only to the next annual period. Credit for Instructors: One (1) hour credit for each hour presenting. Course Requirements: At least three (3) hours of ethics.
California	CA Ins. Code §1749.3 CA Ins. Code §1749.4 CA Ins. Code §1749.5 CA Ins. Code §1749.6	Hours: 24 prior to renewal Exemptions: Licensee in good standing for 30 continuous years and are 70 years of age or older. This exemption shall not apply to those individuals licensed for the first time on or after January 1, 2010. Carry-Over: Allowed. Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Other: No applicable provision.

State	Citation	Requirements
Colorado	CO Rev. Stat. Ann. §10-2-301 3 CO ADC INS 1-2-4 CO Bulletin B-1.14	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Up to 12 carryover credit hours during the 120 days before the licensing continuation date Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: At least 3 hours must be in ethics and 18 must be in the lines of insurance for which the agent or broker is licensed.
Connecticut	CT Gen. Stat. Ann. §38a-782a CT ADC §38a-782a-2 CT ADC §38a-782a-10 CT ADC §38a-782a-13 CT ADC §38a-782a-12	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited Credit for Instructors: One (1) hour credit for each hour of qualifying instruction. Course Requirements: At least three hours in insurance law and regulations or ethics. A minimum of 6 hours per line of authority.
Delaware	DE Code Ann. tit 18 §1718 18 DE Admin. Code 504	Hours: 24 biennially Exemptions: Automatic credit of 12 hours is provided for individuals who have been continuously licensed for 25 years or for AAIs, CEBs, CLUs, ChFCs, FLMIIs, CFPs, FSPAs, CICs, CPCU and RHUs. Carry-Over: 5 hour max, cannot apply to ethics requirement Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: At least three hours must be in ethics.
District of Columbia	DC Mun. Regs. tit. 26-A §106	Hours: 24 per license renewal Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited. Credit for Instructors: One (1) hour credit for each hour of qualifying instruction. Course Requirements: At least 3 hours in ethics. No more than one-half of the required hours may be satisfied by company sponsored courses.
Florida	FL Stat. Ann §626.2815 69 FL. Admin. Code Ann. 69B-228.240	Hours: 24 biennially Exemptions: A person licensed for 6 or more years must complete 20 hours (intermediate, advanced-level, or other approved courses) every 2 years. A person licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in upper-level insurance-related courses must complete 10 hours every 2 years. Carry-Over: Allowed Credit for Instructors: One (1) hour credit for each hour of qualifying instruction. Course Requirements: At least 3 hours must be in ethics. Any person who holds a license to solicit or sell life insurance must complete a minimum of 3 hours in approved continuing education on the subject of suitability in annuity and life insurance transactions.

State	Citation	Requirements
Georgia	GA Comp. R. & Regs. 120-2-3-.15 GA Comp. R. & Regs. 120-2-3-.19 GA Code Ann. §33-23-18	Hours: 15 annually (license less than 20 years); 10 annually (license 20 years or more) Exemptions: Any individual who has been licensed as an agent for ten consecutive years or more and who does not perform any of the functions specified in paragraph (3) of subsection (a) of GA Code Ann. §33-23-1 other than receipt of renewal or deferred commissions shall be exempt from continuing education requirements as outlined in GA Code Ann. §33-23-18. On approval of the Commissioner, persons holding professional designations in insurance may receive a reduction as outlined in GA Comp. R. & Regs. 120-2-3-.19. Carry-Over: Allowed as long as they do not exceed 50% of the requirement for that year. Credit for Instructors: One and one-half (1-1/2) hours for each hour taught. Course Requirements: A least 3 hours in ethics. CEBs, ChFCs, CLUs, and FLMIIs need only complete six hours.
Hawaii	HI Rev. Stat. Ann. §431:9A-124 HI Memorandum 2011-2	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited Credit for Instructors: Continuing education equivalents, as determined and approved by the commissioner, may include the teaching of continuing education courses. Course Requirements: Three credit hours relating to ethics training or relating to the insurance laws and the insurance rules. Other: Effective January 1, 2012 an insurance producer who is authorized to sell life insurance and who is engaged in the sale of annuity products must complete a one-time, four hour approved training course on annuity products by January 31, 2012. Those insurance producers who obtain a life insurance line of authority after January 31, 2012 must complete the one-time, four hour approved training course before they can sell annuities.
Idaho	ID Code §41-1013 ID Admin. Code 18.01.53.012 ID Admin. Code 18.01.53.013 ID Admin. Code 18.01.53.025	Hours: 24 biennially Exemptions: No exception or extension shall be made solely because of age. Carry-Over: Up to one-half of requirements. Credit for Instructors: One (1) hour credit for each hour of qualifying instruction. Course Requirements: At least 3 hours of credit in insurance law and/or ethics.
Illinois	IL Admin. Code tit. 50 §3119.45 IL Admin. Code tit. 50 §3119.60 IL Admin. Code tit. 50 §3119.65	Hours: 24 per license renewal Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: A maximum of 36 hours may accumulate on file with the department. Credit for Instructors: Credit allowed. See IL Admin. Code tit. 50 §3119.65 for criteria. Course Requirements: At least 3 hours must be in ethics.

State	Citation	Requirements
Indiana	IN Code Ann. §27-1-15.7-2  760 IN Admin. Code 1-50-13  760 IN Admin. Code 2-10-1  IN Bulletin 184	Hours: 24 per license renewal Exemptions: May be requested for retired agents. Carry-Over: Prohibited Credit for Instructors: A licensee who teaches a course approved by the commissioner shall receive continuing education credit for teaching the course. Course Requirements: No applicable provisions.
Iowa	IA Code Ann. §522B.6 IA Admin. Code 191-11.1 IA Admin. Code 191-11.2 IA Admin. Code 191-11.3	Hours: 36 per license renewal term Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: Three credits must be in ethics.
Kansas	KS ST §40-4903 KS Admin. Regs. 40-7-20a	Hours: 12 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No applicable provision. Credit for Instructors: Same hours as person taking that course. Course Requirements: At least 1 hour shall be in ethics and no more than 3 hours shall be in insurance agency management.
Kentucky	KY Rev. Stat. Ann. §304.9-295 806 KY Admin. Regs. 9:220(5)	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: 12 hours max Credit for Instructors: Same hours as person taking that course. Course Requirements: At least 6 hours must be directly related to the lines of insurance covered by the license. At least 3 hours must be in ethics.
Louisiana	LA Rev. Stat. Ann. §22:1193 LA Admin. Code 37:X1.705 LA Admin. Code 37:X1.709 LA Admin. Code 37:X1.711 LA Admin. Code 37:X1.713	Hours: 24 biennially Exemptions: Exemptions for persons sixty-five years of age or older on January 1, 2012, who have at least fifteen years of experience as a licensed agent, broker, or solicitor. Carry-Over: 10 hours max Credit for Instructors: Same hours as person taking that course. Course Requirements: At least 3 hours in ethics.

State	Citation	Requirements
Maine	ME Rev. Stat. Ann. tit. 24-a §1482  Code ME R. 02-031 Ch. 542 §4	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited Credit for Instructors: No applicable provision. Course Requirements: At least 3 hours in ethics.
Maryland	MD Code Ann. Insurance §10-116  MD Regs. Code 31.03.02.03	Hours: 16 biennially if licensed for less than 25 years; 8 biennially if licensed for 25 years or more Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No applicable provision. Credit for Instructors: One and one-half (1-1/2) times the hours as person taking that course. Course Requirements: At least 3 hours in ethics.
Massachusetts	MA Gen. Laws Ann. Ch. 175 §177E 211 CMR 50.05 MA Bulletin 2011-12	Hours: 60 (first 3 years); 45 triennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Allowed Credit for Instructors: Same hours as person taking that course. Course Requirements: Licensees are encouraged to take at least one credit hour of approved instruction in each line for which they are licensed. [Note: Due to the significant number of producers deficient in meeting CE requirements for prior compliance periods, the Division provided a grace period until December 31, 2011. On or after January 1, 2012, the Division will review the compliance status of all licensed producers, and may take enforcement action. Any producer who fails to meet the requirements may be subject to suspension of license and possibly be subject to monetary penalties.]
Michigan	MI Comp. Laws Ann. §500.1204c	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No applicable provision. Credit for Instructors: No applicable provision. Course Requirements: At least 3 hours of ethics.
Minnesota	MN Stat. Ann. §60K.56(6) MN Stat. Ann. §45.30	Hours: 24 per licensing period Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No applicable provision. Credit for Instructors: Three times the hours as person taking that course, only once per course per renewal cycle. No more than 12 hours total. Course Requirements: Three hours must be in ethics. No more than one-half of the required hours may be credited to a person for attending courses either sponsored by, offered by, or affiliated with an insurance company or its agents.

State	Citation	Requirements
Mississippi	MS Code Ann. §83-17-251 MS Code Ann. §83-17-253	Hours: 12 per license renewal (holding license for 18 months or less); 24 per license renewal (holding license for more than 18 months) Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No applicable provision. Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: Three hours shall have a course concentration in ethics.
Missouri	MO Ann. Stat. §375.020 20 MO Code Regs. 700-3.200	Hours: 16 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Allowed for next two-year period. Credit for Instructors: Same hours as person taking that course. Course Requirements: Of the required hours three (3) hours of instruction must cover ethics, Missouri law, and producer duties and obligations to the department during any two (2)-year licensure period.
Montana	MT Code Ann. §33-17-1203 MT Admin. R. 6.6.4204	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No applicable provision. Credit for Instructors: Twice the hours as person taking that course. Course Requirements: At least 3 hours of ethics and 1 credit hour of instruction on changes in Montana insurance statutes and administrative rules.
Nebraska	NE. Rev. St. §44-3904 210 NE ADC Ch.38 §006	Hours: 21 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No applicable provision. Credit for Instructors: Same hours as person taking that course. Course Requirements: Must also complete 3 additional hours on insurance industry ethics every two years.
Nevada	NV Admin. Code 683A.330 NV Admin. Code 683A.350 NV Admin. Code 683A.355	Hours: 30 per 3 year renewal period Exemptions: Persons with 20 years of experience or CLUs, CICs, CFPs, and ChFCs. Carry-Over: Prohibited Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: At least 3 hours must be in ethics.

State	Citation	Requirements
New Hampshire	NH Code Admin. R. Ins 1302.03	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited. Credit for Instructors: No applicable provision. Course Requirements: A minimum of 3 credits (but no more than 10 credits) shall be an approved ethics courses.
New Jersey	NJ Admin. Code §11:17-3.6 NJ Bulletin 2002-27	Hours: 48 per 4 year renewal term; 24 per 2 year renewal term Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No applicable provisions. Credit for Instructors: No applicable provisions. Course Requirements: For 4 year renewal terms, 6 hours must be in ethics; for 2 year renewal terms, 3 hours must be in ethics.
New Mexico	NM Stat. Ann. §59A-12-26 NM Admin. Code 13.4.7.2 NM Admin. Code 13.4.7.9 NM Admin. Code 13.4.7.10	Hours: 15 annually Exemptions: Persons who have been licensed for 25 years or more. Carry-Over: Prohibited Credit for Instructors: No applicable provision. Course Requirements: At least 1 hour must be devoted to ethics. No additional credit will be granted to a licensee for completion of the same approved course more than once in any three (3) year period.
New York	NY Ins. §2132	Hours: 15 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: No applicable provision.
North Carolina	NC Gen. Stat. §58-33-130 11 NCAC 6A.0802	Hours: 24 biennially Exemptions: A licensee who was granted an exemption from the requirements of this Section prior to October 1, 2010 continues to be exempt from continuing education requirements for as long as the licensee certifies to the Commissioner that he: is age 65 or older; has been continuously licensed in the line of insurance for at least 25 years; and meets the other requirements outlined in 11 NCAC 6A.0802(j). Carry-Over: Allowed for whole credits. Credit for Instructors: Same hours as person taking that course. Course Requirements: Three hours must be in ethics.



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## Agent Education (4)

State	Citation	Requirements
North Dakota	ND Cent. Code §26.1-26-31.1 ND Cent. Code §26.1-26-31.6	Hours: 24 biennially Exemptions: No requirements for producers who, as of January 1, 2010, are at least 62 years of age and have a combined total years of continuous licensure as an insurance producer and years of age which equals eighty-five. Carry-Over: 12 hour max Credit for Instructors: Same hours as person taking that course. Course Requirements: Three hours must be in ethics.
Ohio	OH Rev. Code Ann. §3905.481 OH Admin. Code §3901-5-01 OH Admin. Code §3901-6-13 OH Bulletin 2011-07	Hours: 24 per license renewal period Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited, with some exceptions as outlined in OH Admin. Code §3901-5-01(E)(7). Credit for Instructors: Twice the hours as person taking that course, only once per course per renewal cycle. Course Requirements: Must include at least 3 hours of approved ethics training.
Oklahoma	36 OK Stat. Ann. §1435.29 OK Admin. Code §365:25-3-1	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: 6 hours max Credit for Instructors: Same hours as person taking that course. Course Requirements: Three hours ethics and two hours of legislative updates.
Oregon	OR Rev. Stat. §744.072 OR Admin. R. 836-071-0215 OR Admin. R. 836-071-0225	Hours: 24 biennially Exemptions: Any person who before January 1, 2010: requests an exemption from the requirement; is authorized to transact only life insurance; is 58 years of age or older; has 10 or more years of experience as a licensed insurance producer; and meets other requirements outlined in OR Rev. Stat. §744.072. Carry-Over: Prohibited Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: At least 3 hours on the subject of Oregon statutes and administrative rules, including recent changes, and at least 3 hours of professional ethics.
Pennsylvania	40 PA Cons. Stat. Ann. §310.8 31 PA Code §39a.7	Hours: 24 biennially Exemptions: A licensee who was licensed as an agent or broker for a line of authority prior to January 1, 1971, and who has been continuously licensed as an agent, broker or producer for the line of authority since that time. Carry-Over: 24 hour max Credit for Instructors: Twice the hours as person taking that course, only once per course per renewal cycle. Course Requirements: No applicable provisions.

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## Agent Education (4)

State	Citation	Requirements
Puerto Rico	PR ADC INS Rule LII	Hours: 24 biennially Exemptions: Licensees who are sixty (60) years of age or older and who have been licensed for a period of no-less-than twenty-five (25) years are excluded. Carry-Over: Allowed Credit for Instructors: No applicable provision. Course Requirements: At least 3 hours in professional ethics.
Rhode Island	RI Gen. Laws §27-3.2-3 RI Gen. Laws §27-3.2-4 RI ADC 11-5-40:5 RI ADC 11-5-40:6 RI Bulletin 2002-7 RI Bulletin 2004-12 RI Bulletin 2005-1 RI Bulletin 2011-02	Hours: 24 biennially Exemptions: Residents holding a license continuously without a lapse of licensure for twenty-five (25) years and who are age fifty-five (55) at the time of renewal or persons who had held a license for at least twenty (20) years and were at least sixty (60) years of age as of July 3, 2004. Carry-Over: 12 hours max Credit for Instructors: Same hours as person taking that course. Course Requirements: Minimum of five (5) hours specific to each class of insurance for which the producer is licensed and three (3) hours of ethics.
South Carolina	SC Code Ann. §38-43-106 SC Code of Regulations R. 69-50	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: 18 hour max Credit for Instructors: Same hours as person taking that course. Course Requirements: A minimum of 8 hours in each line of authority and with at least 3 hours of ethics.
South Dakota	SD Codified Laws 58-30-115 SD Codified Laws §58-30-116 SD Admin. 20:06:18:01 SD Admin. 20:06:18:09 SD Admin. 20:06:18:18 SD Admin. 20:06:18:20	Hours: 10 per license renewal Exemptions: Agents 65 years of age or older who have held a license for ten or more years and resident attorneys licensed to practice law in the state. Carry-Over: Prohibited Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: A licensee may not receive more than one-half of the required hours from courses sponsored by any one insurance company.
Tennessee	TN Code Ann. §56-6-107 TN Admin. Code 0780-01-56-.08	Hours: 24 biennially Exemptions: Producers licensed continuously since 1994. Carry-Over: Maximum of 12 credit hours; however, carryover of ethics credit hours is prohibited. Credit for Instructors: Twice the hours as person taking that course, only for the first time the instructor presents the course, unless there is a substantial change in content. Course Requirements: Must include 3 hours of ethics training.



State	Citation	Requirements
Texas	TX Ins. Code Ann. §4004.051 TX Ins. Code Ann. §4004.052 TX Ins. Code Ann. §4004.053 TX Ins. Code Ann. §4004.054 28 TX Admin. Code §19.1004 28 TX Admin. Code §19.1010 TX Bulletin B-0034-01 TX Ins. Code Ann. §4004.202	Hours: 30 biennially Exemptions: Agents licensed 20 years or more. Carry-Over: Prohibited Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Also an equal number of self-study hours as credit for course preparation. Course Requirements: Must have at least 2 hours in ethics.
Utah	UT Code Ann. §31A-23a-202 UT Admin. Code R590-142 [Repealed and reenacted. Effective August 23, 2011]	Hours: 24 biennially Exemptions: Exemptions include agents first licensed before April 1, 1978. Carry-Over: Prohibited Credit for Instructors: Twice the hours as person taking that course, only once per course per renewal cycle. Course Requirements: Must include at least 3 hours of continuing education related to ethics. At least half of the required hours must be through classroom hours of insurance-related instruction and not more than half of the total credit hours required shall be satisfied by courses provided by insurers.
Vermont	VT Stat. Ann. tit. 8 §4800a VT Admin. Code 4-3-41:4 VT Admin. Code 4-3-41:7	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: At least 3 hours of continuing education related to ethics and no more than six hours may be related to insurance agency management.
Virginia	VA Code Ann. §38.2-1866 VA Code Ann. §38.2-1871 VA Code Ann. §38.2-1867	Hours: 16 biennially Exemptions: Exemption may be requested for agent 65 years of age or older who has held a license for 20 years. Carry-Over: Excess credit hours accumulated during any biennium may be carried forward. Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: If more than one license, must complete 24 hours with a minimum of eight hours in each type of license. Prior to January 1, 2013, two hours must be on laws and regulations applicable in Virginia. As of January 1, 2013, three credit hours shall be in insurance ethics, which may include insurance law and regulations applicable in Virginia. No more than 75% of hours can be earned from courses provided by insurance companies or agencies.

State	Citation	Requirements
Washington	WA Admin. Code §284-17-220 WA Admin. Code §284-17-224 WA Admin. Code §284-17-252 WA Admin. Code §284-17-256 WA Admin. Code §284-17-258	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Excess hours cannot be carried over. Credit for Instructors: Twice the hours as person taking that course, only once in a three-year period. Course Requirements: A minimum of 3 hours must be courses approved in Ethics.
West Virginia	WV Code §33-12-8 WV C.S.R. 114-42-4 WV C.S.R. 114-42-6 WV C.S.R. 114-11B-6 WV Code §33-12-8a	Hours: 24 biennially Exemptions: Agents licensed on or after July 1 of the second year of a biennium are exempt from education requirements for that biennium. No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Maximum of 6 credit hours. Credit for Instructors: No applicable provision Course Requirements: A minimum of 3 hours must be courses approved in Ethics.
Wisconsin	WI ADC Ins. 28.04	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: Prohibited Credit for Instructors: Same hours as person taking that course, only once per course per renewal cycle. Course Requirements: At least 3 credit hours must be in the ethics of insurance.
Wyoming	WY Stat. Ann. §26-9-231 WY Admin. Code Ins Gen Ch 20 §4	Hours: 24 biennially Exemptions: No applicable exemption by reason of professional designation, age, or length of employment. Carry-Over: No Applicable Provision. Credit for Instructors: Same hours as person taking that course. Course Requirements: At least three hours must be in ethics. The number of insurance company sponsored continuing education hours shall not exceed fifty percent (50%) of the total requirement.